CalRecycle

SB 343 Material Characterization Study Revised Preliminary Findings Appendix 2 – Public Comments Received

CalRecycle Publication Number DRRR-2024-1746

Appendix 2. Public Comments and Data Availability

CalRecycle is committed to conducting the SB 343 implementation using a public process. As such, all public feedback is reviewed and actively considered to improve the study and help California achieve the goals of SB 343. This appendix includes all public comments received by CalRecycle, including those sent to the Solid Waste Characterization inbox, regarding the contents of the SB 343 Material Characterization Study Preliminary Findings (December, 2023) publication during the open comment period December 28, 2023 to May 31st, 2024 and the corresponding informational session held on February 13, 2024.

Additionally, comment emails, letters and information related to this study can be requested via a California Public Records Act request. Requests may be initiated through the CalRecycle Public Records Portal.

For accessibility purposes, images, figures, tables, and data (non-text items) have not been included in this Appendix and are denoted as "Non-text item(s) included in body of email are not reproduced here" or "Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.". To see the original letter, please submit a public records request. Please submit your request on the CalRecycle Public Records Center (https://calrecycle.govqa.us/WEBAPP/_rs/(S(mwe5xwrskdujgcclcfvcx1sg))/supporthome.aspx). External sources of data submitted by various organizations can also be made available by submitting a public records request. External data was not integrated into CalRecycle's analysis and is not validated nor endorsed by CalRecycle.

Informational Session – February 13th, 2024

Comment 1:
Name: Nayiri Partamian
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: What if the material/manufacturer is from outside CA and they sell the product to Californians and it has the recycling label but that item is not accepted in CA?

Comment 2:
Name: Jackie Nunez
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Collection rate does not equal recycled rate.

Comment 3:
Name: Jordyn Milewski
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Will these slides be available to the public after this meeting?

Comment 4:
Name: Michael Siminitus
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: 0% recovery of FW and remainder/composite organics? Does this exclude dirty MRF operations like Newby Island Resource Recovery Park and Oakland's OMRF?

Comment 5:
Name: Jennifer Gilbert
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Interesting that non-food containing buckets were sorted out at MRFs while buckets that contained food did not. Can you expand on this and why this was?

Comment 6:
Name: Renae Burke
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Why is LDPE not listed in Table?

Comment 7:
Name: Dylan DeThomas
Date received: 2/13/2024
Source: Informational session
Email includes attachments: No
Comment: Kudos to staff for the comprehensive report. For Jurisdiction survey access. Generally speaking, there's a national database. We align with what CalRecycle has found. Calls for greater transparency with the public (how often they occurred, how data is interpreted).
Question 9a: Clarity on which criteria is being used to determine recyclability and for which classification (Is criteria based on page 9 or on appendix 6).
How are these two interrelated?
Another broad question: But, happy to circle back around.

Comment 8:
Name: Erin LaCosta

Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: The last speaker (with glasses and purple mask) told us the percent of California counties that are served by MRFs that successfully sort a given material. But the criteria in SB-343 is that materials must be sorted by LVTPs that serve at least 60% of recycling programs statewide.
So do those graphs answer this criteria? How are these two ideas related?

Comment 9:
Name: Michael Smaha
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Comments/clarifications. Are metal cans considered recyclable in California?
Acceptance rate findings on these materials: 57% is sorted by large volume processers, but in volume 1
Their acceptance rate is higher than what is reported in preliminary reports
Steel and aluminum aerosol cans: Acceptance rates are also reported as higher than is being demonstrated today
Please confirm data for accuracy
Are there any methods that CalRecycle has to modify this report before it gets finalized?

Comment 10:
Name: Alicia Cafferty
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Will CalRecycle be merging the findings from the 2 sources into one "master" list of recyclable materials? And if so, when will this be provided?

Comment 11:
Name: Carol Patterson
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: The report appears to equate a “program” with a county-level program (From P8 of the SB 343 report Using survey and sorting data, CalRecycle staff estimated the percentages in terms of (1) the proportion of state’s recycling programs (at the county level) and (2) the proportion of the statewide population, served by those LVTPs.)
Should this be interpreted as CalRecycle’s working definition of what constitutes a “program” when determining if the MRF sorting standards in 343 have been met? If not, when will CalRecycle define “program”? Will a list be published? Thank you.

Comment 12:
Name: Kathie Schlag
Date received: 2/13/2024

Source: Informational Session (Zoom)
Email includes attachments: No
Comment: We use PET bottles with labels that contain a chasing arrows symbol with the words "please recycle". Based on this report, PET bottles are 100% recyclable. Would it be acceptable to keep the chasing arrows symbol on the package or does it need to be removed? Thank you.

Comment 13:
Name: Jagpal Takhar
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Where would mixed material items fall? For example, nespresso pods that contains plastic, aluminum foil, and coffee grounds.
Which category would they fall under?

Comment 14:
Name: Unknown
Date received: 2/13/2024
Source: Informational Session
Email includes attachments: No
Comment: Clarity on when compliance date it?
If there is a material that is decided its not recyclable, when can you stop putting the chasing arrows?

Comment 15:
Name: Alexandra Golden
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Hello! This is Ali Golden from TerraCycle. Can you please clarify if materials being "sorted for recycling" is considered evidence that the material is actually "recycled"? Put another way - if a material is sorted at a MRF, it will be considered recyclable under SB 343? or will any further data be gathered to validate that recycling has actually occurred downstream (e.g. the materials have been sold to recycling end markets)? thank you!

Comment 16:
Name: Caleb Brian
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Caleb Brian - 3M - What is the status of store drop off recyclability in California, as it doesn't seem to be addressed in this report.

Comment 17:
Name: Nick Lapis

Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Sorry lots of questions.
19a: Would like access to raw data, will that data be made available or will this need to be a PRA. Will every stakeholder have to do a PRA?
19b) For metals. I could see why they don't pass collection requirements. Why do they not pass the sorting requirements? Everything goes past ferrous / non ferrous.
PT themroforms: 100% rate, when recycling commission reported this, we had a much lower rate only 7 or 12 MRFs.
Were all bales of PET lumped in together? Some thermoforms enter PET bottle bales that get lumped together. This is because of law focusing on type and form specifically. Legislation includes type and form and separation into different streams.
Mixed plastics has 100% sorted rate into bales, how are you evaluating the requirement that markets meet Basel convention criteria. There are no markets for mixed 7 plastics that are consistent with the Basel convention. Could you respond to this? How are you evaluating the Basel criteria? There are no mixed No 7 plastics because Basel convention prohibits the transfer of mixed plastics.
Wanted further clarification: How do you evaluate that the Basel convention is correct?

Comment 18:
Name: Kenisha Cromity
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: On the report there is a table with the covered materials. For plastics there is ''PET Clear'' and ''PET pigmented'', but there is no reference on OPAQUE bottles. Is ''Opaque'' covered by the ''pigmented'' classification?
Will CalRecycle accept ''How2Recycle'' logo?

Comment 19:
Name: Jackie Nunez
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Questions I would like to have addressed on the report:
1) Grossly inflated PP sorting rate when their own legally-mandated RDRS data shows less than 15% sorting
2) All plastic products FAIL because no plastic waste bale passes Basel requirements
3) Why didn't they include Basel requirements in their sorting assessments?
4) Why didn't they report sales data?

Comment 20:
Name: Dylan de Thomas
Date received: 2/13/2024
Source: informational session
Email includes attachments: No

Comment: Wanted to touch on what was just asked, make a broader comment. Responsible end markets part of 54 answers a lot of questions that 343 did not give CalRecycle authority.
Just my 2 cents. How does this interact with 54 and make that determination. From our perspective, we want residents and consumes to see recycling instructions and to see accurate labeling. We also want the impactful work of 54. We want to update this list. We want to recover materials. There's a question about trending towards recyclability... Can CalRecycle comment on when they might publish that extra data, etc.

Comment 21:
Name: Danielle Quist
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Thank you for these public comment opportunities. I have a comment and a question. It would be most helpful if the category name in the SB54 CMC matched with the SB343 MCS category ID. Would CalRecycle please provide a crosswalk or other method for the public to more easily link the CMC to the MCS?

Comment 22:
Name: Jennifer Gilbert
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: If CalRecycle is not the one that evaluates if the collection of a material is following the Basal Convention--who or what agency does?

Comment 23:
Name: Jagpal Takhar
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Additionally, is there a separate category for smaller size items, such as Nespresso pods which are only a few cubic inches?

Comment 24:
Name: Dawn
Date received: 2/13/2024
Source: Informational session
Email includes attachments: No
Comment: Across all material types, we are hearing questions and concerns about the methodology. Gaining further insight and clarity and methodology, grouping of multiple categories. Does this hinder/help the determination of material type. Does this hinder the calculation in percentages to being determined as recyclable. For example: in the fiber categories, we want more understanding as to why these were grouped this way. Clean paper and mixed in multiple buckets. Could you tell us the thought process and logic behind this methodology?

Gain further understanding and insight on the thought process

Comment 25:
Name: Michelle Fay
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Building off of what has already been asked. Does not seem that CalRecycle has the authority to enforce. Can you elaborate what that enforcement process might look like? What if they use chasing arrows incorrectly?
To further understand, Sb54 will not affect 343 determination? Can materials still be labeled as recyclable under 343, because these aren't really talking to each other. Correct?
Some jurisdictions do not explicitly state if that material is accepted but may be recovered when it arrives to the facility. Some recyclable materials may be excluded because of this (regarding the tin / steel bimetal cans). Should we be explicitly stating what can be recovered for recycling, even if in the past they haven't been listed. When next material characterization study is done, will more jurisdictions be included on acceptability?

Comment 26:
Name: Melissa Vettleson
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: How are you handling materials like LLDPE which do not have their own resin identification code but are chemically most similar to HDPE to the point they may be labeled either way and are commonly known to be fully recyclable?

Comment 27:
Name: Maria Farag
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: what are the particular material numbers for the chasing arrows?

Comment 28:
Name: Jim Puckett
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Put out a fact briefing that said consumer plastics are not recyclable and they're being exported illegally. They are ignoring 343 criterial. Consistency with the Basel Convention; requires unmixed and uncontaminated. In the data, this plastic waste is exported from CA based on preliminary findings. This would be illegal according to Basel.

Data shows that plastic categories are contaminated and would be considered unrecyclable. Basel convention requires PET be fully recycled. Thermoform PET is not being recycled. This is forbidden under Basel.
All of CA plastic waste is illegal to import to any (Basel) party (other than Canada). Mexico, Vietnam and Malaysia receive these plastics each day. CalRecycle can answer my concerns by saying “we have no authority”
Serious problem: What are you going to do about what we have found that waste plastic is too contaminated and too mixed (according to Basel). What is your next step?
Can read our report on beach clean up at Basel action network.

Comment 29:
Name: Jackie Nunez
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Didn’t answer Jim’s question, how will you stop CA illegal plastic waste exports? It’s part of labeling

Comment 30:
Name: Ellot Toth
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: If you're going to be looking at the size of packages, will it be a part of future studies? Want to make sure he is not putting a label on packaging that may be considered too small

Comment 31:
Name: Susan Collins
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Several Comments:
Material types that are currently in the CRV program...
Appreciate the study and the slides were helpful. Found that the study
CalRecycle was boxed into a methodology because of legislative language that isn’t in synch with real world conditions. Report seems to have some non-sensical reports (Table F1 in appendix 6) glass beverage containers that are brown and green CRV and glass containers that are rare with low recovery rates. Those colors may lead to them being not recyclable. Am I misinterpreting that?
The CRV program is completely outside of what we have in the material recovery facilities. We lose that (context for) data because it looks like glass containers are not being recycled in this state. It’s nonsensical! Report findings are compromised because the study is blind to contextual aspects (such as the CRV program). Maybe this is why you’re finding low volumes.
Glasses are not sorted by color, and that context is also important. The premix designation is a problem.

Metal cans and glass: sortation failure, this is not a classification of the materials being recyclable. Some facilities were sorting materials and some were not. This is just a facility decision, maybe nothing to do with how recyclable these materials are. This is probably an equipment access issue. This context is important to distinguish between sortation failure vs recyclability designation.

Comment 32:
Name: Nick Lapis
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Basel convention: You may be misinterpreting the statute a little bit. Requirements (of 343) include curbside acceptance req. MRFs sorting req, and additional requirements like being on APR design guidelines, etc... The way statute is structured, what meets the criterial for curbside accessibility and sortation (at facility). You need to do this. Manufacturers noted they won't have access to this information otherwise.
Your survey was supposed to answer this question. Manufacturers said they would not have access to this information otherwise.
Defined stream that was consistent with the Basel convention was supposed to be evaluated in this report, but it was not included.
It is part of your charge under SB 343.
Broader comment:
As you've heard, the public and regulating community is confused about whether being on this list is sufficient to be deemed recyclable. Clarifying this would be helpful. Because people don't understand what you mean by something being on this list, passing criteria, yet being unable to be recycled.

Comment 33:
Name: John
Date received: 2/13/2024
Source: informational session
Email includes attachments: No
Comment: Clarifying question:
Greater desire for transparency. Some of the data collection detailed will have to be requested via PRA request.
CalRecycle's stance that you do not have the authority to initiate onramps because you have not completed your second evaluation
Follow up: CalRecycle's position that you cannot initiate the update until 2027 by law?

Comment 34:
Name: Jackie Nunez
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: CA PP waste has no buyers in the US

Comment 35:
Name: Doug Kobold
Date received: 2/13/2024
Source: Informational Session
Email includes attachments: No
Comment: Under the report/summary findings table I, percentages that are accepted in curbside programs, polystyrene
Materials rarely observed and low recovery rate. EPS packaging will be acceptable in the program and be included. Worried about local governments collecting polystyrene. Clarity on this because maybe it's mixed in 1-7?
Have you looked at the graphical images these jurisdictions put out?

Comment 36:
Name: Renae Burke
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: What is the actual metric in the report that manufacturers can use to determine if a product can be labeled as recyclable?

Comment 37:
Name: Jasmine Wei-Ming
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Can the panel give a quick explanation of how a layperson can use the report? For example, is it correct that to determine if a material fulfills the requirement of 42355.51(d)(2)(B)(i) (material sorted into defined stream by LVTs that serve at least 60% of recycling programs statewide) - you look at Table 1? And to determine if a material fulfills the requirement of 42355.51(d)(2)(B)(ii) - you look at Table 2? And how does the data in Appendix 7 play into this?

Comment 38:
Name: Alicia Cafferty
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Regarding the material categories and subcategories: Is there a more detailed definitions list we can refer to which provides a bit more detail what is meant by and captured within each category?

Comment 39:
Name: Eric Harris
Date received: 2/13/2024
Source: informational session
Email includes attachments: No

Comment: Here to represent the carton council. We want to develop sustainable carton recycling. We've invested 4 million to help carton recycling programs. It gets a bunch of schools, up to 8500 students. We fully support the state's goal for sustainable recycling systems. But we are gravely concerned that cartons have been erroneously categorized.
3rd parties have monitored carton recycling. Our data shows that cartons meet the criteria for recycling.
29.7M Californians, 75.3% of population can include cartons in curbside collection.
San Diego
LA
Oakland
Concord
Oakland
And hundreds of others include cartons in their programs.
curbside recycling programs. This doesn't reconcile with CalRecycle's data.
We were perplexed.
Sortation criterion: counsel over 2/3s of MRFs accept carton recycling from state communities.
SBS343 findings indicate only 8 of the countries, send their recyclables to MRFs.
Substantially different from our findings.
We believe the categorization of cartons as mixed vs fiber convoluted the data. We request cartons be re-classified as fiber.
Two separate commodities (gables) and XXX. Both types of cartons are processed and recycled together. We request this re-categorization
We are here to help. We represent companies that produce sustainable beverage cartons.
This report should not create barriers to entry. Cartons are recyclable and we want to fully participate in SB 54.
It will confuse the public if cartons are replaced by plastic products. We don't want this.
Appreciate the opportunity to provide new data and information. We want to provide data about carton recyclability.
Urge CalRecycle to integrate carton data (from us) into their report.

Comment 40:
Name: Maria Farag
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: what is the date of implementation? I understand CalRecycle is not the authority and cannot initiate rules until April 2027.

Comment 41:
Name: Erin LaCosta
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No

Comment: Erin LaCosta from Geosyntec Consultants. Somebody asked if you can use Table 1 to understand if a product meets the criteria from 42355.51. d(2) (A) and Table 2 to understand if a product meetings criteria 42355.51. d(2) B. The answer was to contact CalRecycle to further discuss this. How do we contact CalRecycle for these questions?

Comment 42:
Name: Katie
Date received: 2/13/2024
Source: informational session
Email includes attachments: No
Comment: We are concerned about MCS prelim findings about steel food cans and lids and gable top containers. 95% of recycling programs that serve 60% of population, we had this data.
Only 57% of large vol processers are sorting things for sale.
Issue for dairy institute members that utilize these products and want to see the recycling symbol on them. (package aseptic and gable top cartons).
We don't think the data you guys have captures the reality of aseptic and gable top cartons.
According to resource recycling data, 75% has access to carton recycling
32 MRFs accept aseptic (over 2/3 in the state) and accept gable top cartons.
Calrecycle should integrate these understandings before publishing this data.
Loss of recyclability designation could result in plummeting recycling rates and counters the goals of SB54. We want to increase recycling rates for all materials.
Ensuring recycling symbols remains on products helps operators reach the goals of 54.

Comment 43:
Name: William Lorenzi
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: Focusing on ramp, where and how potentials of integrated materials will be recognized.
If recycling industry recognizes the material as a desirable material.
When and how will opportunities be provided, and will it be done through SB343 or SB54?
Am I understanding correctly that SB343 permits a submission for exemptions to evaluate exceptions. Is there a time where this would be possible?
Issue of acceptance vs recycled and (another dimension) what is it recycled into?
Challenge of down cycling. Incentive to get a product recyclable, into down cycling of methods to something logical. Define down cycling methods. An example is paper cups in Australia. They're grinding those things into asphalt!
An area might accept product because they are being subsidized to do so (to downcycle). Are there policies in regard to recycling vs down cycling.

Comment 44:
Name: Kristine Kruger

Date received: 2/13/2024
Source: informational session
Email includes attachments: No
Comment: 52311.51 To use recyclability designation product must be routinely...
Routinely is not defined but can CalRecycle clarify what materials “routinely” inform feed stock.
CalRecycle website report addresses routinely “feed stock”.

Comment 45:
Name: Jan Dell
Date received: 2/13/2024
Source: Informational Session (Zoom)
Email includes attachments: No
Comment: The last speaker falsely claimed that exceptions under SB54 would count under SB343. Please confirm that is a FALSE ASSERTION. The two laws have distinctly different and unique requirements

January 2024

Comment 46:
Name: Christopher Finarelli
Date received: January 2, 2024
Source: Email (cfinarelli@TheHCPA.org)
Email includes attachments: No
Comment: Team CalRecycle –
Thank you for providing the SB 343 Material Characterization Study Preliminary Findings. HCPA is reviewing the document but I have a quick question for clarity:
Why does it only say tin/steel (should be tinplate) aerosol containers and why is there an absence of aluminum aerosol containers? Even in the sections on aluminum, it still says “tin/steel” aerosol containers.
Thank you!
Christopher Finarelli
Sr. Director, State Government Relations & Public Policy - Western Region
Household & Commercial Products Association
Direct: 202-833-7314 Cell: 916-832-1723

Comment 47:
Name: Tanya Melendez
Date received: 1/3/2024
Source: Email (TMelendez@phxpkg.com)
Email includes attachments: No
Comment: Dear CalRecycle, Could you kindly clarify whether a consumer product comprised exclusively of a material type and form listed in table 2 of the report is eligible to carry the chasing arrow symbol?
Tanya Melendez
Regulatory Affairs and EHS Manager
PHOENIX

P 630 276 2516
975 Meridian Lake Dr, Aurora, IL 60504

Comment 48:
Name: Brad Braddon
Date received: January 8, 2024
Source: Email (Brad.Braddon@tekni-plex.com)
Email includes attachments: No; Non-text item(s) included in body of email are not reproduced here
Comment: Dear CalRecycle,
I am trying to understand the labeling requirements of SB343 so I found this report and looked at the 3 charts in the cut/paste below. Our company makes PS foam service ware including ps foam hinged containers, meat trays, and egg cartons. Some of these products have chasing arrows embossed in the product which may need to be removed.

It looks like we can label our ps foam products with chasing arrows – 74% population acceptance. However, this seems at odds with the common belief that ps foam is not recycled in California.

I'm checking to see that I am correct that ps foam service ware can be labeled with chasing arrows.

Brad Braddon

Comment 49:
Name: Jason Pratt
Date received: 1/8/2024
Source: Email (jason.pratt@aptar.com)
Email includes attachments: No
Comment: I have a question on the meaning and significance of % MFT outflow for PL-23 and PL-24. I have yet to find a clear definition of MFT outflow that is clear and concise.

My current understanding is that outflow represents the % of a recovered material delivered to the MRF that is discovered in their waste stream. Am I correct in this?

For Example PL-23
% of population that accepts for recycling = 86%
% of MRF material recovered = 89%
% MTF outflow = 31% stdev = 24%
Please assist.
Thank you,
Jason
Jason Pratt Director, Material Science
Aptar CSP Technologies
960 West Veterans Boulevard, Auburn, Alabama 36832, United States

(phone) +1 334 321 3026
jason.pratt@aptar.com | www.aptar.com | www.csptechnologies.com

Comment 50:
Name: Beth Beckmann
Date received: January 11, 2024
Source: Email (beth.beckmann@ipaper.com)
Email includes attachments: No
Comment: Can you please provide clarity on the 2.25 mil thick plastic bags found at grocery stores that say return to store for recycling?
A product or packaging may be considered recyclable in the state if, based on information published
by CalRecycle, the product or packaging is of a Material Type and Form that is both:

1. Collected for recycling by jurisdiction recycling programs that collectively encompass at least 60 percent of the population of the state . The study showed Plastic bags at 30% of population.
2. Sorted into defined streams for recycling processes by large volume transfer/processing facilities, that collectively serve at least 60 percent of recycling
programs statewide. The study showed Plastic bags access to sorting at 60% of population.

Thanks
Beth Beckmann | Account Manager
Northern CA Kraft Bag Business
International Paper | Mobile: 916.260.5692

Comment 51:
Name: Ed Boisson
Date received: 1/18/2024
Source: Email (ed@boissonconsulting.com)
Email includes attachments: Yes
Comment: Please see the attached questions related to the SB 343 Preliminary Findings report and methodology.
Don’t hesitate to contact me to clarify or discuss our questions.
Thank you very much.
Ed Boisson, Principal
Boisson Consulting
ed@boissonconsulting.com
Office: 415-499-0919
Mobile: 415-940-6796

Attachment text: Date: January 18, 2024
To: CalRecycle Waste Characterization Team
From: Ed Boisson
Re: SB 343 Preliminary Findings Report – Questions on Methodology

This is a follow up to a conversation I had with Dan Brown, who suggested we submit these questions on the SB 343 Preliminary Findings Report to the wastechar@calrecycle.org email channel.
Please note that we have also submitted a separate, related information request under the Public Records Act.

If possible, we request a response prior February 13, 2024 to help inform verbal comments at the workshop and written comments by the February 29, 2024 deadline.

CalRecycle Analysis of Collection by Jurisdiction Recycling Programs

1. Did CalRecycle focus exclusively on access to local jurisdiction residential curbside recycling collection programs, or where pertinent did you also examine access to local jurisdiction drop off or other away-from-home collection programs?

2. Did CalRecycle assume that the local guidance information reviewed applied to the entire population of each jurisdiction? Or did you make separate assumptions, for example, for single-family vs. multi-family coverage? If so, what were these assumptions?

3. Did CalRecycle calculate access using population or number of households?

CalRecycle Analysis of Materials Recovered by Large Volume Transfer/Processors (LVTPs)

4. Per the report, CalRecycle started with a list of 50 LVTPs and surveyed 37 of them.
    A. Why weren't 13 facilities surveyed? Were they non-responsive?
    B. The report says, "CalRecycle performed phone surveys with 37 LVTPs. Eight of the surveyed facilities did not perform material sorting activities on-site and were removed as facilities of interest." That implies that responses from 29 surveyed facilities that do sort on-site were used in the analysis. Is that correct?
    C. The report says, "The surveyed facilities which do perform material sorting activities onsite serve counties that make up 88.5% of the population of the *state."* Is it specifically the 29 surveyed facilities that sort on-site that make up 88.5% of population in the state?
    D. In calculating population served, did CalRecycle gather information on, or calculate, the portion of a county's population served by each facility? Or were facilities assumed to serve the entire county on a binary yes/no basis?

5. Can CalRecycle provide a list of the facilities that were surveyed and identify the facilities where field sampling was conducted? Such a listing need not identify any facility-specific data.

6. Why were some outflows evaluated via visual characterization vs. physical sorting? What factors were considered?

7. Is CalRecycle using the terms "outflow" and "defined stream" interchangeably?

8. Based on review of the report, we think survey responses identified which facilities produce each outflow and also which material types & forms the facility operators consider a contaminant vs. sorted into a defined stream for recycling. CalRecycle then determined whether to “count” certain MT&Fs identified in the surveys based on field sampling findings. Is this correct?

9. How should standard deviations listed in Tables 3A-3D be interpreted? For example, in Table 3A gable-top cartons in the aseptic/gable-top outflow is presented as 77% mean and 66% standard deviation. We understand this to mean that 68% of the data points, or one standard deviation, are between 11% (i.e., 77%-66%) and 100% (i.e., 77% + 66%, limited to 100% at maximum). Is this a correct interpretation of the presentation of the statistics?

10. On page 9 the report lists four criteria used to identify when the presence of a Material Type and Form in an outflow is acceptable or likely to be a contaminant. But we don’t see where the report identifies which material types and forms were excluded based on which of these criteria. Separately, Appendix 6 does list material types and forms not classifiable as sorted for recycling, but the table includes information on three different criteria than those described on page 9. Can you clarify which material types and forms found in the analyzed outflows/defined streams were not classified as sorted for recycling, and what the specific reasons were?

11. Why did CalRecycle define a recycling program as a county? Did CalRecycle evaluate how material specific findings would change if recycling program was defined as a city and/or county unincorporated area?

Comment 52:
Name: Tanya Melendez
Date received: 1/19/2024
Source: Email (TMelendez@phxpkg.com)
Email includes attachments: No
Comment: Dear CalRecycle, Could you kindly clarify if the materials listed in table 2 of the report are material types and forms that are:

1. Collected for recycling by recycling programs in at least 60% of the state?
2. Sorted into defined streams for recycling processes by large volume transfer or processing facilities that process material and collectively serve at least 60% of recycling programs in the state?

Tanya Melendez
Regulatory Affairs and EHS Manager
PHOENIX
P 630 276 2516
975 Meridian Lake Dr, Aurora, IL 60504

Comment 53:
Name: Dave Shonerd
Date received: 1/19/2024
Source: Email (dshonerd@multistate.us)

Comment: Hello, Is the recently released materials characterization study a part of the SB 343 & AB 881 Recycling and Disposal Reporting System (RDRS) Permanent Regulations rulemaking? Or is the materials characterization study part of a separate, future rulemaking? Thanks for your help! Dave Shonerd
MultiState Senior Director of State Operations
1000 Wilson Blvd., Suite 1800, Arlington, VA 22209
office: 703.684.1110 ext. 109
Email includes attachments: No

Comment 54:
Name: Jordan Fengel
Date received: 1/23/2024
Source: Email (Jordan.Fengel@cartoncouncil.org)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Hello - I wanted to also include the CalRecycle Waste Characterization team in our email, my apologies for omitting that on my first email.
Have a great rest of the day and thanks again for your time and input.
Best regards, Jordan

Jordan Fengel
Director of Government Affairs
Carton Council of North America
Phone: +1 940-380-4668 | Mobile +1 940-220-0585
www.recyclecartons.com

Attachment Text: The following questions and comments pertain to the methodology CalRecycle used for the SB 343 Preliminary Findings Report released in December 2023.

If possible, we request that you reply before the February 13, 2024 workshop to inform our verbal comments at the workshop and our written comments to be submitted by the February 29, 2024 deadline.

Questions
1. Can you provide a copy of the spreadsheet(s) used to analyze the materials each jurisdiction accepts and to calculate population with access? Or at minimum, can you provide a listing of which specific jurisdictions CalRecycle determined do accept, and do not accept, gable-top cartons and aseptic containers in their recycling programs?
2. From the report we understand that:

> Eight samples of the “aseptic/carton” outflow were collected at four of ten facilities where field work was conducted and were physically sorted.
>
> Eighteen samples of the “mixed paper outflow” collected from 10 facilities were hand sorted, and the average portions of aseptic containers and of gable-top cartons were each less than 1 percent of the total.

Six samples of the “ONP and mixed paper” outflow from three facilities were visually characterized. On average, gable-top cartons comprised three percent of these flows, but no aseptic containers were reported found in the sampled outflows.

Overall, per Table 2 CalRecycle found that facilities serving eight counties sort aseptic containers and gable-top cartons into defined streams for recycling.
Questions:
A. Can you break down the number of facilities (and counties they serve), if any, that CalRecycle determined count as sorting aseptic containers and gable-top cartons for recycling in each of the key defined streams we cite above? To clarify, we are asking if CalRecycle can fill in the blank cells in the table below.

B. Assuming CalRecycle did not count aseptic containers and gable-top cartons found in “mixed paper” outflow as sorted to a defined stream for recycling, what were the specific reasons for excluding them?

C. Assuming CalRecycle did not count aseptic containers and gable-top cartons found in “ONP and mixed paper” outflow as sorted to a defined stream for recycling, what were the specific reasons for excluding them?

D. In analyzing the presence of aseptic containers and gable-top cartons found in the “mixed paper” and “ONP and mixed paper” outflows, did CalRecycle exclude from the calculation facilities found to sort these MT&Fs to the “aseptic/carton” defined stream (i.e., dedicated carton bales)? (In such facilities very low quantities would be expected in the mixed paper outflows.)

3. In survey responses, how many facilities reported that they produce the “aseptic/carton” outflow as a defined stream for recycling? And how many reported that they proactively direct cartons to the “mixed paper” or “ONP and mixed paper” outflows as a defined stream for recycling?

4. Can you provide the provide the actual calculated percentages of aseptic containers and gable top cartons found in the mixed paper outflow? (They are reported in Appendix 8, but only as “<1%”.)

5. In Table 3A, why is there no standard deviation reported for gable-top cartons found in the “ONP and mixed paper” outflow? (Standard deviations were reported for other MT&Fs found in this outflow type.)

6. Can you provide findings on the average composition of the residual outflow that comprised aseptic containers and gable-top cartons, with standard deviations, for the 10 facilities where field characterization work was conducted? To allow comparison of quantities found in residual vs. defined streams, can you also provide the combined weight of each MT&F for each outflow, including residual?

Comments:

1. The separation of gable-top cartons and aseptic containers in the mixed material class is problematic; as in previously submitted comments to CalRecycle, CCNA advocates and encourages the evaluation of these materials together as both types of food and beverage cartons, gable-top and aseptic containers, are typically collected, sorted and marketed together as Paper Stock Institute (PSI) Grade 52 or can be found together in PSI Grade 54, Mixed Paper. Combining the materials makes it easier for consumers, collectors, processors and the PRO to properly educate, sort, and market the materials for recycling at paper mills for fiber recovery. While a small number of California programs currently accept only one type of carton, these are exceptions and are not the result of limited capabilities of MRFs and markets to accept both types of cartons as a single material type.

2. While we have used the terms “aseptic containers” and “aseptic/carton outflow” in this letter as this matches the terminology used in the SB 343 Report, we regard these terms to be problematic as there are other types of aseptic containers besides cartons. We highly recommend using the terms “aseptic cartons” and “aseptic/gable top carton outflow” to ensure reader understanding that only aseptic cartons and not other forms of aseptic containers are being referred to.

Comment 55:
Name: Chuck Muir
Date received: 1/25/2024
Source: Email (Chuck.Muir@CityofPaloAlto.org)
Email includes attachments: No
Comment: Hi CalRecycle, I have a question about the list of items CalRecycle deems compostable, which is none.

If the SB 343 list does not allow any items to be labeled and considered compostable. What does this mean for jurisdictions? Does this mean we should not collect these items? Does it mean it is ok to still collect the items if our processor says they can take them and process them? Palo Alto uses an AD facility to receive organics include compostable bags, food ware, compostable cups, compostable straws, compostable utensils, etc. Thanks. Chuck
Chuck Muir
Manager Environmental Control Programs
Zero Waste Palo Alto | Public Works Department
(650) 496-6979 | Chuck.Muir@cityofpaloalto.org
www.ZeroWastePaloAlto.org

Comment 56:
Name: Cristine E. Schulz
Date received: 1/25/2024
Source: Email (Cristine.E.Schulz@kcc.com)
Email includes attachments: No; Non-text item incorporated into email body submitted to CalRecycle are not reproduced here..
Comment: Hello; I’m writing you to seek guidance on interpretation of the Chasing Arrows requirements in SB343, following your recent issuance of SB 343 Material

Characterization Study Preliminary Findings (DRRR-2023-1728). For our products that are wrapped in LDPE flexible plastic film, we recognize that limited availability of recycling of this film means that we need to move away from the open chasing arrows with the polymer identifier code instead to a solid triangle to identify the polymer.

My question, however, is that as a manufacturer of global products, our products are usually sold into multiple countries. Would it be considered in compliance in the state of CA if a package were to have two indicators on it to meet regulatory requirements in multiple markets? In the flexible packaging film example above, if we had one icon with a solid equilateral triangle with resin identification code with a CA near it, can we also have on the same package the open chasing arrows that are accepted in other markets?
Thank you in advance for your guidance or instructions as to how else I might engage to receive an opinion on this question.

Best regards,
Cristine Schulz

Cristine E. Schulz
Global Sustainability Manager
ceschulz@kcc.com | kcprofessional.com

February 2024

Comment 57:
Name: Sarah Forsythe
Date received: 2/7/2024
Source: Email (sforsythe@tillys.com)
Email includes attachments: No
Comment: Hello, My name is Sarah and I am the Sustainability Lead at Tillys, a California-based apparel retailer and brand. I am familiarizing myself with the SB 343 law and the recent CalRecycle Report. I am interested in attending the Feb. 13th workshop virtually, however I am wondering if clothing/textiles will be covered in the workshop, and in what capacity? Any information is appreciated. Thank you, Sarah
Sarah Forsythe | Technical Designer / Sustainability Lead | she/her|
949-609-5599 x5316

Comment 58:
Name: Annalee Akin Augustine
Date received: 2/8/2024
Source: Email (AAugustine@caladvocates.com)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Hello, On behalf of the organizations listed below, please find a letter attached requesting that the California Department of Resources Recycling and Recovery (CalRecycle) extend the public comment period for the California Senate Bill 343 Preliminary Findings report.

Here is a list of the organizations included:
Air Conditioning Heating & Refrigeration Institute
American Chemistry Council
American Forest & Paper Association
California Chamber of Commerce
California League of Food Producers
California Manufacturers & Technology Association
California Restaurant Association
Can Manufacturers Institute
Chemical Industry Council of California
Consumer Brands Association
Consumer Technology Association
Dart Container Corporation
Flexible Packaging Association
Personal Care Products Council
Plastics Industry Association
The Toy Association
Western Growers Association

We appreciate your time and consideration of this request. Please do not hesitate to reach out to myself, Annalee Augustine at aaugustine@caladvocates.com, or John Hewitt, of Consumer Brands Association and cc'd here at jhewitt@consumerbrandsassociation.org, if there are any questions.

Attachment Text: February 7, 2024
Submitted Electronically via wastechar@calrecycle.ca.gov
Ms. Rachel Wagoner
Executive Director
California Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025
Re: REQUEST FOR EXTENSION OF COMMENT PERIOD: California Senate Bill 343 Preliminary Findings Report

To Whom It May Concern:
The undersigned organizations respectfully request that the California Department of Resources Recycling and Recovery (CalRecycle) extend the public comment period for the California Senate Bill 343 Preliminary Findings report. In particular, we request that CalRecycle extend the comment period by 30 days.

Our organizations appreciate the opportunity to provide comments on the SB 343 Preliminary Findings Report and look forward to engaging with CalRecycle throughout the SB 343 implementation process. We aim to provide fulsome, contributory feedback on the Preliminary Findings Report to support the employment of the state's "Truth in Labeling" law. Given both the report's comprehensiveness and the technicality of its results, we believe a 30-day extension is reasonable and appropriate to enable all stakeholders adequate time to review and respond to the 131-page report. Additionally,

a comment period extension would be beneficial in ensuring stakeholders are able to receive and incorporate necessary clarifying information from the upcoming CalRecycle preliminary findings presentation public meeting to facilitate maximal constructiveness in submissions.

Please do not hesitate to contact us if you have any questions regarding this request. Thank you for your consideration.

Sincerely,
Air Conditioning Heating & Refrigeration Institute
American Chemistry Council
American Forest & Paper Association
California Chamber of Commerce
California League of Food Producers
California Manufacturers & Technology Association
California Restaurant Association
Can Manufacturers Institute
Chemical Industry Council of California
Consumer Brands Association
Consumer Technology Association
Dart Container Corporation
Flexible Packaging Association
Personal Care Products Council
Plastics Industry Association
The Toy Association
Western Growers Association

Comment 59:
Name: Czarina Rosales
Date received: 2/8/2024
Source: Email (Czarina.Rosales@thaiunion.com)
Email includes attachments: No; Non-text item incorporated into email body submitted to CalRecycle are not reproduced here..
Comment: Good day.
I was reading about SB 343 and the restriction on the use of the recycling symbol, and was wondering if you would be able to clarify on some concerns.
1. Is the restriction only on the label or on the marking on the packaging itself?

Comment 60:
Name: Czarina Rosales
Date received: 2/9/2024
Source: Email (Czarina.Rosales@thaiunion.com)
Email includes attachments: No
Comment: Thanks for the quick feedback.
I'm still confused on my questions 1 and 2 actually.
I will try to research more but I believe we still have time to comply as we wait for CalRecycle's material characterization study results.

Comment 61:
Name: Jan Dell
Date received: 2/12/2024
Source: Email (lastbeachcleanup@gmail.com)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment:
Please confirm receipt.
Submittal of Fact Briefing proving that key legal requirements of SB343 have been ignored and false information was published in the SB343 Preliminary Findings report.

CalRecycle's own bale material characterization data proves that AB881 is being violated. We are calling on the CA State AG office to investigate illegal exports of plastic waste from California and false reporting by waste companies.

Jan Dell
Independent Engineer
The Last Beach Cleanup
Email: lastbeachcleanup@gmail.com
www.lastbeachcleanup.org

Attachment Text: Fact Briefing:
California State's Own Data Reveals Consumer Plastics are not Recyclable and are Being Exported Illegally
February 12, 2024

1.Summary Findings and Recommendations
In 2021, California passed two laws related to plastic waste that were intended to protect California consumers from false recyclability labels (SB343)[1] and foreign countries from receiving contaminated plastic waste bales from California (AB881).[2]

Under SB343, the California Department of Resources, Recycling, and Recovery (CalRecycle) was required to publish data about the types of materials and forms recycled in California by January 1, 2024. On December 28, 2023, CalRecycle released the SB343 Material Characterization Study Preliminary Findings (SB343 Report).[3] Comprehensive, detailed assessments of the California SB343 and AB881 legal requirements, the material characterizations and other information stated in the SB343 Report, and California's plastic waste export data were performed by Basel Action Network (BAN) and The Last Beach Cleanup in January and February 2024.

Through these assessments, the groups have discovered that California agencies are allowing mixed and contaminated plastic wastes to flow from the United States. This not only violates California state law but also leads to the export of unrecyclable plastic wastes with weaker economies and limited recycling infrastructure.

1.1 Summary Findings

1. All California plastic waste bales are illegal to export from California to any other country other than Canada due to their being too mixed and contaminated. Yet such exports take place on a daily basis from California to countries such as Mexico and Malaysia, and no exports take place to Canada.

2. All California plastic waste bales exceed Basel Convention contamination normative thresholds. All categories of plastic waste outputs from California material recovery facilities (MRFs) exceed the Basel Convention's "almost free from contamination and other types of wastes" criteria used to determine

whether strict trade controls apply to the plastic wastes -- levels that have been globally implemented by most Parties with allowable contamination thresholds of from 2-5%. The eight California consumer plastic waste categories had contamination levels ranging from 6 to 17%. Therefore, all California plastic waste categories should be classified as plastic waste listing Y48 and be subject to the control procedures and requirements of the Basel Convention. These include a ban on trade between Basel Parties and the United States.

3. California plastic waste bales currently fail the Basel Convention "unmixed" criteria. Only one of the eight categories of plastic waste outputs from California material recovery facilities (MRFs) was unmixed, and therefore seven of the eight waste categories must be considered controlled as Y48. Even polyethylene terephthalate (PET) bottles, exercising the one Basel accepted mixture of PET, polypropylene (PP), and polyethylene (PE), were further contaminated by 8-9% other polymers. Further, the criteria requiring full recycling of mixtures of PP, PET, and PE fails as PET thermoforms mixed in with the PET bottles are not recyclable and must be considered as further contamination.[4] Consequently, with these PET thermoforms included, California bales of PET bottles can be considered as containing as much as 64% total unrecyclable contamination.

4. California plastic waste bales fail under SB343 to be "recyclable." Due to all California plastic wastes qualifying as Basel Convention Y48 (mixed and contaminated) plastic wastes), the U.S. is unable to export these under the Party to non-Party trade ban under the Convention. Therefore, under SB343, all California plastic waste streams fail to qualify as "recyclable" as they are not "defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention."

5. Exported California plastic waste bales cannot be claimed for diversion under AB881. Due to all

California plastic wastes qualifying as Basel Convention Y48 (mixed and/or contaminated) plastic wastes and as the U.S. is unable to export these under the Party to non-Party trade ban under the Convention, all categories of California consumer plastic waste fail the second AB881 criteria of needing to be legal in all jurisdictions when exported to Basel Parties. Therefore, the PP, PET and PE plastic waste is not eligible for diversion credits under AB881 when exported and must therefore be

considered disposal. Yet CalRecycle reports high statewide waste diversion rates of 40% based on the export of plastic waste, including to Mexico.[5]

6. California plastic waste exports to non-OECD Countries and Mexico are massive. In 2022, California exported 109,276 bales of plastic wastes to non-OECD countries and 166,423 bales of plastic wastes to Mexico.[6,7]

7. California exports thousands of tonnes of unrecyclable trash within bales to Mexico under the pretense of recycling. From 2015 through 2023, it is estimated that California exported 47,129 tonnes of waste to Mexico in the form of contamination in PET bottle bales which is not recycled. That is equivalent to 3,459 truckloads of waste or nearly 10 trash truckloads per day for nine years.

8. The SB343 Report is incomplete and inaccurate on several key issues:

a. Sortation assessments by individual “material type and form” were not performed for plastics, as required by California law. Seven of the eight categories of plastic wastes assessed were mixtures of material types and forms. PET thermoforms do not pass the SB343 criteria requiring that facilities covering 60% of the California population must be separating the material type and form.

b. The number of facilities reported to sort plastic bales in the SB343 consultant survey is grossly inflated compared to legally mandated CalRecycle Recycling and Disposal Reporting System (RDRS) Data (less than 15%). Polypropylene rigid plastics do not pass the SB343 sorting criterion of representing 60% of the population.

c. No assessment of sales of plastic material types and forms was made, as required by California law.

d. The SB343 Report findings contradict CalRecycle’s SB1335 Assessment that no type of single use plastic food service item, including PET clamshells and PP cups, is recyclable in California. The SB343 Report findings also contradict the 2021 California Recycling Commission Report that found that only PET and high density polyethylene (HDPE) bottles and jugs pass recyclability requirements of collection, sortation, and reclaiming/reprocessing.

1.2 Recommendations

California State Agencies must comply with, and enforce compliance with, California laws. It is not legal for CalRecycle to ignore requirements of SB343 that have been codified into state law.

Furthermore, truthful implementation and enforcement of state laws can only be achieved through transparency. Based on this detailed assessment, we recommend:

1) CalRecycle must revise the SB343 Material Characterization Study as follows:

a. Acknowledge that none of the eight categories of plastic waste are consistent with the Basel Convention's trade rules, and therefore no type of consumer plastic material and form meets the “recyclable” requirements of CA SB343.

b. Require the separation of PET thermoforms into a unique category of material type and form since they cannot be recycled with PET bottles.

c. Correct errors in the number of facilities claiming to sort PP bales to be consistent with CalRecycle’s legally mandated RDRS data which shows an insufficient 15% sorting rate.

d. Include a detailed assessment of the sales of sorted plastic waste bales, including destination, value, material characterization, and total weight on an annual basis.

e. Publish detailed, original survey and sortation data identifying facility name and location.

2) The California State Attorney General (AG) should:

a. Investigate illegal diversion reporting under AB881 by municipalities, MRFs and other plastic waste exporters. It is a criminal offense to report false information to a state agency.

b. Ensure that exports of Y48 wastes to Mexico are legal to receive in Mexico prior to allowing their export. Mexico currently does not have a valid bilateral agreement with the US to receive Basel Y48 plastic wastes from the US.

2. California Recycling Laws SB343 and AB881

In 2021, California passed two laws related to plastics that were intended to a) protect California consumers from false recyclability labels (SB343), and b) prevent foreign countries from receiving contaminated plastic waste bales from California (AB881).

2.1. SB343-- Truth-in-Labeling Law

Signed into law in 2021, California Senate Bill 343 Truth-in-Labeling for Recyclable Materials is intended to prohibit the use of misleading recycling claims on non-recyclable products and packaging. California law SB343 defines for the public what “recyclability” means. Among other requirements, it requires that plastic waste bales created by MRFs be “defined streams” that are “consistent with the requirements of the Basel Convention:[8]

“(B)(i) The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020, that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.”

The Basel Convention's Plastics Amendments (2019)[9] created a new category of plastic waste to better control trade in harmful, contaminated plastic wastes. This new category is found in Basel's Annex II, entitled "Wastes for Special Consideration," and is listed as Y48. Generally, Y48 describes plastic waste shipments that are:

a. not sorted to singular polymers or resins with one exception (mixtures of polyethylene terephthalate (PET), polypropylene (PP), and polyethylene (PE));[10] or

b. halogenated compounds excepting some designated non-post-consumer fluorinated plastics compounds; or

c. destined for non-recycling destinations including waste-to-energy; or

d. not "almost free from contamination and other types of wastes."[11]

Since the adoption of the amendments, the meaning of the phrase "almost free from contamination and other types of waste" noted in point (d) above, has been defined and implemented by Basel parties in practice to fall between a 2-5% non-target material concentration level by weight.[12] Non-target material is considered "contamination and other types of waste", as it is not the single polymer or resin, or mixture of PP, PE and PET, targeted for recycling.

If a plastic waste stream possesses one or more of the above a-d attributes it must then be considered as a plastic waste subject to the control system of the Basel Convention either as being a hazardous waste (A3210) or by being Y48. Most important in this context are points (a) and (d) -- that is, the exports of plastic wastes must be unmixed polymer types (with the noted exception of a mixture of PET, PP, and PE), and, in addition, should be below a 5% contamination level if they are to avoid Basel scope and control.

Among other requirements, Basel controlled wastes are all subject to a Basel rule that prohibits trade between Parties and non-Parties[13] unless a valid special (Article 11 agreement akin to Basel) is in place.[14] The U.S. is not a Basel Party and thus would need to utilize a valid Article 11 agreement to trade in Basel controlled wastes with a Party.

The only countries that remain non-Parties to the Convention other than the U.S. are: South Sudan, Fiji, Haiti, and East Timor. And, as far as Article 11 agreements go, the U.S. has for a long time been Party to an Organization for Economic Co-operation and Development (OECD) Council decision[15] for trade in recyclable waste under certain conditions. However, this OECD agreement currently allows trade in recyclable hazardous waste (A3210) with other OECD countries. It does not allow trade in Y48. Thus, if a plastic waste is defined by the U.S. and an importing country as being hazardous waste then it could be traded with another OECD country such as Mexico or Japan under that agreement but only under the OECD's notification and consent regime wherein a shipment cannot proceed until first receiving the consent of the importing country.

As far as special agreements in place that might allow the U.S. to trade in the new plastic waste category Y48 described above, only one such agreement exists. That agreement is one the U.S. signed in 2020 with Canada.[16] This “arrangement” as it has been called, while having been criticized as being itself out of compliance with the Basel Convention’s Article 11 criteria, allows a free trade in all manner of plastic wastes between Canada and the U.S. including Y48.

But no other agreement exists that would allow the U.S. to export Y48 plastics to any other Basel Party including countries receiving significant exports of California’s plastic waste: Mexico, Malaysia, Vietnam, and Indonesia.

In sum, due to the Party to non-Party trade prohibition in Basel, all exports of plastic wastes from

California that exceed what Parties to the Convention consider a normative threshold of contamination of 5% or are mixtures of resins or polymers other than PET, PP, and PE are very likely to be Y48 and illegal unless they are going to Canada, or alternatively designated by both trading OECD countries as hazardous plastic wastes. As such, any such shipments will fail the criteria of SB343 of being “consistent with the requirements of the Basel Convention" and thus fail the SB343 definition of “recyclability.”

2.2 AB881 Plastic Waste Exports

Due to convenient port access to Asia and trucking to Mexico, California has a long history of exporting questionably “recyclable plastic” wastes.[17] California’s state policy goal to divert 75% of the state’s solid waste from landfills or incineration has sadly incentivized exports of contaminated and mixed plastic wastes. Even when exported to recycling operations, much of the shipments are fractions which can be higher than 50% that are not economically recyclable and end up being dumped or burned.[18] The recognized harms and questionable legality of California’s plastic waste exports on communities in foreign countries was motivation for the State to pass AB881 to prevent harm to other countries and to ensure such exports are legal.[19]

California law AB881[20] requires that the export of plastic wastes shall not constitute diversion (diverted from landfill or incineration) for the purpose of diversion credits through recycling and shall be considered disposal, unless the following conditions are met:

(1) The plastic waste export is a mixture of plastic wastes consisting of polyethylene,

polypropylene, or polyethylene terephthalate and the export is destined for separate recycling of each material.

(2) The plastic waste export is not prohibited by an applicable law or treaty of the country of destination and the import of the plastic waste into the country of destination will be conducted in accordance with all applicable laws and treaties of the country of destination.

(c) For purposes of this section, “export” means export out of the country. Until January 1, 2024, or the expiration of a relevant trade agreement or arrangement with Canada or Mexico, whichever is later, “export” does not include export to Canada or Mexico.

The first criterion limits the export essentially to PET bottles consisting of the PET bottle, the PP cap and the PE label attached to the bottle. Here the Basel Convention’s new definition of controlled plastic waste noted above applies, and since the first criteria aligns precisely with what Basel considers to be outside of the scope of Basel controls, the second criterion becomes pivotal.

The second criterion above from AB881 seeks to ensure that the exports from California of plastic wastes are legal in all jurisdictions including the laws of the country of import. The question then arises if any of these mixtures of PET, PE and PP mixed with other polymers or if they possess significant contamination making them qualify as Y48. As was mentioned previously, the Basel Convention only allows trade in Basel controlled wastes between Parties,[21] unless a valid special (Article 11 agreement) is in place. The U.S. is not a Basel Party and only two special agreements are in place for the U.S. to trade in Basel controlled plastic waste that might comply with AB881: exports for recycling to Canada of any kind of plastic waste including Y48 or other OECD countries (including Mexico) if the waste is hazardous plastic waste (A3^{21}0). Thus, exports of Y48 from the U.S. to any countries other than Canada would fail the second criteria of being legal in all jurisdictions.

The PET bottles or other mixtures of PET, PP, and PE described by the first criteria can also be defined as Y48 if they are mixed with other polymers or exceed the 5% normative contamination threshold.

Mixtures with other polymers or with contamination levels above 5% are considered as exceeding the “almost free from contamination…” clause in the Basel Plastic Amendments. Basel is law for 190 countries and thus exporting plastic wastes with over 5% contamination or mixed with other polymers other than PP, PE, and PET from a non-Party such as the U.S. would be illegal from the standpoint of the importing country. Thus, it fails to fulfill the second criteria in AB881. As such it could not be considered for diversion credits and rather would be disposal and not recycling under California law.

Finally, we must note that the law itself is contradictory where it considers shipments to Mexico not to be considered export for the purposes of the legislation (see note (c) cited above). California lawmakers presumably exempted Canada and Mexico due to the presence of pre-existing hazardous waste trade bilateral agreements with the United States. However, Mexico does not in fact possess a valid agreement to trade in Y48 wastes which are not considered hazardous, but only for hazardous waste. Thus, trade in Y48 (Annex II mixed and contaminated plastics) with Mexico is prohibited by the Basel obligations of Mexico (a Basel Party) with respect to the U.S. (non-Party). Therefore, the law should never have exempted Mexico from the definition of "export."

3. SB343 Material Characterization Study's Preliminary Findings Report Proves Non-Compliance with SB343 and AB881 Requirements

Let us then examine the levels of mixing and contamination present in California's Material Recovery Facilities (MRFs). Under SB343, CalRecycle was required to publish data about the types of materials and forms recycled in California by January 1, 2024. On December 28, 2023, CalRecycle released SB343 Material Characterization Study Preliminary Findings (SB343 Report). The SB343 Report contains detailed material characterizations of eight material type and form (MT&F) “categories” of post- consumer plastic waste bales produced by California MRFs.[22]

BAN and The Last Beach Cleanup assessed the eight categories of plastic waste bale material characterizations with the requirements of the Basel Convention (consistency and compliance with Basel is required by SB343 and AB881). The findings are summarized in Table 1, drawn from the data derived from the study, and detailed in Appendix 1.

The plastic waste bales all showed material characterizations with high contamination percentages (ranging from 6 to 17% contamination) which are above the levels allowed by Basel Convention Parties (2-5%) in their best interpretations of the strict contamination language adopted in 2019 that defines the threshold for Basel control.[23] As a prime example, the 27 countries of the European Union (EU) allow only 2% contamination for exports leaving the EU.

Further, all but one of the eight categories of plastic waste (HDPE Mix) that could be characterized as mixed beyond the allowed mixture of PP, PET, and PE and thus fall within the scope of Basel control. Further, we note that even the PET Bottle categories where one would expect just PP, PET, and PE contain 8-9% other plastic polymers, meaning that these also qualify as Y48 due to containing plastics other than just PP, PET, and PE.

In sum, California's own data shows that both California laws SB343 and AB881 are being flouted as the Basel Convention would not allow the trade of California's mixed and contaminated plastic wastes to be uncontrolled, but rather controlled as Y48 or as hazardous waste. Under such controls, due to the Party to non-Party trade prohibition, and the US being a non-Party, such trade would be prohibited.

Table 1: Summary of CalRecycle Study with respect to Basel Convention Y48 Threshold (All numbers are percentages) *By definition, two of the mixed plastic categories listed by CalRecycle are not compliant to the Basel Convention that only allows one type of mixture: PET (#1), PE (#2 and/or #4), and PP (#5). These two listings will by definition automatically be considered as Y48 (controlled plastic), which, as described above, cannot be traded between non-Parties and Parties to the Basel Convention:

• Mixed Rigid Plastics: this material type and form appears to allow inclusion of plastic mixtures polyvinyl chloride (PVC #3), polystyrene (PS#6), and others (#7).

• Mixtures of #3-7: this material type and form which may also include controlled mixtures of polyvinyl chloride (PVC #3), polystyrene (PS#6), and others (#7).

3.1 Basel Convention Requires Mixed PET, PP, and PE Plastics to Be Separated and Recycled

While the Basel Convention allows for exports of mixtures of PET, PP, and PE without other plastic and non-plastic contamination, the PP, PE, and PET are required upon arrival in the importing country to each be recycled/reclaimed separately. As noted, California law SB343 requires that plastic waste bales created by MRFs be “defined streams” that are “consistent with the requirements of the Basel Convention.[24]

Likewise, as also noted above, AB881 requires Basel compliance in importing countries. Therefore, California law requires recycling/reclaiming facilities in importing countries to separate and reprocess all PET, PE, and PP forms received. Based on our knowledge of global plastic recycling facilities,[25] we believe it is highly unlikely that mixtures of PET, PE, and PP are being separated and all recycled in Mexico,

Turkey, or non-OECD countries. The few plastic reclaiming/recycling facilities that exist in those countries pull out targeted material types and forms (e.g., clear PET bottles) and dump or burn other materials, as has been well documented by the media since 2018.[26] For example, the new PET bottle reclaiming/reprocessing facility opened by ALPLA and Coca-Cola in Mexico in 2022 has a 30% material wastage rate with only 35,000 of 50,000 tonnes of plastic waste material being reclaimed.[27] This is real world evidence that materials other than PET bottles are separated and disposed of at the reclaiming/reprocessing facility. A recently published study of the impact of European plastic waste exported to Vietnam found that “despite strict EU regulations on plastic recycling, there is little oversight on plastic waste shipped from the EU to Vietnam. A large percentage of the exported European plastic cannot be recycled and gets dumped in nature.”[28]

Since PET thermoforms cannot be recycled with PET bottles and PET thermoforms are not known to be recycled separately, PET thermoforms also should be considered contamination in PET bottle bales under the Basel Convention.[29] Therefore, while we have not so indicated in the table above, PET thermoforms must be considered as yet an additional part of the contamination percentages which must be lower than 5% in order to avoid export prohibition under the Basel Convention.

Based on the details provided in the material characterizations in the SB343 Report, Table 2 shows the total contamination of Non-Target Material Type and Form Products for each of the eight consumer plastic waste categories. The contamination of Non-Target Products (e.g., with PET thermoforms added as contamination), ranges from 13 to 64%, shocking levels and far higher than the 5% allowed by the Basel Convention.

Table 2: Contamination of Non-Target Material Type and Form Product in SB343 Plastic Waste Categories (All numbers are percentages)

*As described in Section 3.1, two categories of alleged MT&F did not have a targeted product to recycle and are clearly considered Y48 by the Basel Convention by definition.

3.2 No Exceptions for California Plastic Waste Under Basel Convention

There are only three legal exceptions to the Party to non-Party trade prohibition under the Basel Convention ban and none are likely to be applicable for California:

(1) Exports from the U.S. to Canada are allowed. However, the U.S. Trade Online database shows that California does not export plastic waste to Canada.[30]

(2) Exports to OECD countries of hazardous plastic wastes are allowed. To date there is no evidence that any exports of plastic wastes have been designated by California or potential trading partner countries as hazardous waste plastic.[31]

(3) Exports to other countries that are also non-Party to the Basel Convention, which consist of East Timor, Fiji, Haiti, and South Sudan. However, the U.S. Trade Online database shows that California does not export plastic waste to those countries.[32]

3.3 Summary of Non-Compliance of Plastics with SB343 and AB881 Requirements

1. Basel Convention Contamination Levels: Based on the findings of the SB343 Report, no type of plastic waste outputs from California MRFs pass the threshold Basel Convention language of being “almost free from contamination and other types of wastes.” All eight California plastic waste categories of material type and form characterized in the SB343 Report are thus classified as Basel Y48 plastic wastes and are subject to the control procedures and requirements of the Basel Convention.

2. Basel Convention Unmixed Criteria: Based on the findings of the SB343 Report, only one type of plastic waste output from California MRFs passes the uncontrolled requirement of the Basel Convention requiring plastic shipments to be unmixed excepting the mixture of PP, PE, and PET. But even the PET bottle categories contain 8-9 % other types of plastic. All but one category of material type and form characterized in the SB343 Report is reported to be unmixed by other polymers, leaving seven that are classified as Y48 and subject to the control procedures and requirements of the Basel Convention due to mixing.

3. SB343: Due to the Party to non-Party ban under the Basel Convention which makes exports of Basel controlled wastes between Parties and non-Parties illegal, consumer plastic wastes

generated by California MRFs fail to qualify as “recyclable” under SB343 as they fail the test of “streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.”

4. AB881: All eight categories meet the Basel definition of controlled plastic waste Y48. Due to the Party to Non-Party ban under the Basel Convention, which makes exports of Basel controlled wastes between Parties and non-Parties illegal, and the knowledge of destinations of California plastic waste, exports to Basel Convention Parties (see Section 5 for details), the eight categories of consumer plastic waste characterized in the SB343 report fail the AB881 criteria of needing to be legal in all jurisdictions. Therefore, the eight categories of plastic waste bales created by California MRFs are

not eligible for diversion credits under SB881 and must therefore be considered disposal.

5. Basel Convention Non-Compliance: Even though the U.S. in not a Basel Party, it is clear that California is aiding and abetting illegal trafficking in wastes, which is considered a criminal act in the Convention.[33]

4. SB343 Material Characterization Study's Preliminary Findings Report is Incomplete and Inaccurate on Several Issues

While the detailed material characterizations provided in the SB343 Report prove that no type of plastic material and form can be claimed as "recyclable" under SB343, the report is also found to be incomplete and inaccurate in alarming ways. This section refers to the detailed assessment of plastic material types and forms compliance to the SB343 requirements performed by The Last Beach Cleanup engineers, as shown on The Last Beach Cleanup website.[34] Reference is also made to CalRecycle's Recycling and Disposal Reporting System (RDRS) which requires California facilities to report a range of information, including sortation of plastic by materials types, forms, and weights of bales produced.[35] This information is available on a cumulative basis to the public through Public Records Act requests. Unfortunately, individual facility level information is not made available to the public from this source.

4.1 Sortation Assessment by "Material Type and Form" was not Performed for Plastics

As noted earlier, this is the critical language defining recyclability found in SB343:

(d)(1)(B)(i) The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to 443020, that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.

As summarized in Table 1 and detailed in Appendix 1, the SB343 Report provided material characterization data for eight "categories" of plastics that lump together multiple material types and forms that cannot be recycled together:

• Five "categories" of multiple forms of one material types (HDPE Mix, HDPE Natural Bottle and Container, HDPE Pigmented Bottle & Container, PET Bottle & Container, and Polypropylene),

• Two "categories" of intentional mixtures of plastic material types (Mixed Rigid Plastics and #3-7),

• Only one category sorted by both material type and form (PET bottles).

It is well known that mixed plastic types (e.g., PET and PP) and many product forms of one material type (e.g., PET thermoforms and PET bottles) cannot be reclaimed/reprocessed together. The bottles, containers, and rigids are different "forms"

of plastic items with different physical properties and additives, and they cannot be assumed to be able to be reclaimed/reprocessed together by material type.

A prime example is PET thermoforms. PET thermoforms and PET bottles are currently being falsely combined into one category for assessment by CalRecycle as being "sorted into defined streams for recycling processes." Yet, it is well known that PET thermoforms cannot be recycled with PET bottles and that thermoforms are considered contamination in PET bottle bales.[36] Adding thermoforms to PET bottle bales diminishes the recyclability of PET bottles. CalRecycle acknowledges that PET thermoforms are contamination by offering a "Plastic Quality Incentive Payment" for creation of PET bottle bales with minimal PET thermoform content.[37]

California legal statute requires that the SB343 report identifies contaminants in plastic bales, which the SB343 report fails to do with regard to PET thermoform contamination:

(d)(1)(A)(II) (II) What material types and forms are actively recovered, and not considered contaminants, by the operation or facility.[38]

PET thermoforms alone do not pass the SB343 criteria for recyclability requiring that facilities covering 60% of the California population must be separating the material type and form. As detailed in CalRecycle RDRS data, PET thermoforms are only separated by 1-2 of the 75 MRFs according to CalRecycle data.[39] They cover less than 3% of California's population and nowhere close to the required 60%. For the few PET thermoform bales claimed to be produced at MRFs, it cannot be asserted that the material is being reclaimed/reprocessed later as there are no PET thermoform recyclers in the United States and little market demand anywhere for PET thermoform recycling.[40]

4.2 Number of Facilities Reported to Sort Plastic Bales is Grossly Inflated Compared to Legally Mandated CalRecycle Data

According to the SB343 Report, several types and forms of plastics were found, via informal phone surveys performed by consultants, to have population with access to sorting at high rates above 60%. However, CalRecycle's own legally mandated RDRS data proves that the SB343 Report sorting rates are grossly inflated. Table 3 shows a comparison of the percentage of facilities claiming to sort the material types and forms in question.

Table 3: Comparison of Percentage of Facilities Sorting Plastics by Material Type and Form

As noted in Section 4.1, PET thermoforms alone do not pass the SB343 criteria for recyclability requiring that facilities covering 60% of the California population must be separating the material type and form.

The 100% facilities sortation rate stated in the SB343 Report may be due to the false combination of thermoforms with PET bottles into one category since PET bottles are commonly sorted by MRFs due to California Redemption Value.

Polypropylene plastic forms identified by CalRecycle (PP Clear Single-Use Rigids, PP Pigmented Single- Use Rigids, PP Multi-Use) likewise do not pass the SB343 sorting criterion of representing 60% of the population. The number of facilities claiming to sort polypropylene plastic waste appears to be inflated in the informal consultant survey and is not consistent with CalRecycle's legally mandated RDRS data, which shows fewer than 15% of California MRFs sort polypropylene rigids into bales. According to CalRecycle's RDRS data, less than 3% of California's polypropylene waste collected and sorted.[42] This is more proof that polypropylene waste does not meet SB343 requirements of being collected, sorted, and sold for 60% of the population.

The RDRS data is most credible because it is comprehensive to all MRFs and solid waste facilities, and reporting entities are bound by law to report truthfully through the RDRS system. The few polypropylene bales that are created in California are likely exported to non-OECD countries or Mexico, as shown in the U.S. export data (Section 5). There are no U.S. domestic polypropylene recyclers within economical trucking distance since the closest polypropylene recycler to California is 2,300 miles away in Alabama.[43]

4.3 No Assessment of Sales of Plastic Material Types and Forms

The California legal statute requires assessment of the plastic material types and forms sold in California:

(d)(1)(B)(i) To get a representative sample of recycling programs in the state, the department shall conduct and publish on its internet website a characterization study of material types and forms that are collected, sorted, sold, or transferred by solid waste facilities deemed appropriate by the department for inclusion in the study.

However, there is no information on sales of plastic material types and forms in the SB343 Report. Sales and reclaiming/reprocessing capacity data is critical to determining the recyclability of plastic waste generated in California. As noted above and detailed in The Last Beach Cleanup's survey of post- consumer plastic waste recyclers in California and western states, there is only limited reclaiming/reprocessing capacity for two material types and forms of plastics: PET bottles/jug and HDPE bottles/jugs.[44]

4.4 False Claims of Recyclability are Made Based on Inaccurate and Incomplete Data in SB343 Report in Contradiction to CalRecycle's SB1335 Assessment and the 2021 California Recycling Commission Report

As described above, the SB343 Report incorrectly states that several types and forms of plastic waste categories surveyed have population with access to sorting at high rates above 60%: PET thermoforms, several polypropylene types (PP Clear Single-Use Rigids, PP Pigmented Single-Use Rigids, PP Multi-Use), and "mixed plastic multi-use." This has been interpreted by pro-plastics stakeholders to incorrectly claim that these types and forms of plastics pass the SB343 criteria and can be labeled as recyclable in California.[45]

More evidence of the false claims made on PET thermoforms and PP types is found in CalRecycle's SB1335 Assessment and the 2021 California Recycling Commission Report:

4.4.1 SB1335 Plastic Packaging Act

As described on CalRecycle's website, "SB 1335 aims to ensure food service packaging fits into the state's recycling and composting systems, encourage packaging design improvements to protect public health and wildlife, create more takeback and reuse options at state facilities, and reduce contamination in recycling and composting streams."[46]

SB 1335 requires CalRecycle to maintain a List of Approved Food Service Packaging,[47] which includes products that meet specific reusable, recyclable, or compostable criteria. Food service packaging products that must be approved include bowls, cups, plates, containers, and trays.

CalRecycle's List of Approved Food Service Packaging approves no type of rigid plastic bowl, cup, plate, container, or tray as recyclable.[48] This is in direct contradiction to the SB343 Report findings that imply that since all forms of PET, PP, and PE rigid food service items are allegedly sorted into bales, they are recyclable.

4.4.2 2021 California Recycling Commission Report

In 2021, the California Statewide Commission on Recycling and End Markets performed a comprehensive assessment for products and packaging to determine "What is Recyclable" in California.[49] The criteria were also 60% collection, sortation, and recycling/reclaiming capacity. The 2021 assessment report showed that only three types of plastic items met the criteria: PET#1 bottles, HDPE#2 natural bottles, and HDPE#2 colored bottles.[50] The end market demand and economics of plastic recycling have declined since 2021 and no new rigid plastic recycling operations have opened in California since 2021, so it is not reasonable to claim that more types of plastics are recyclable in California in 2023.[51,52]

5. 2022 and 2023 California Plastic Waste Export Data

California continues to export massive amounts of plastic waste to countries with high plastic pollution rates that do not have the capacity to collect and recycle their own plastic, including to many non-OECD countries in Asia and Central America and to Mexico. Table 4 shows the total amount and selected categories of plastic waste exported by California in 2022 and 2023 (through November) to selected countries with legal contamination import limits ranging between 2 and 5%.[53] The data source is the official U.S. Trade Online Database.[54] The selected categories of plastic waste export include the eight categories of post-consumer plastic waste bales characterized by CalRecycle.

In 2022, California exported 28,809 tonnes of plastic waste to non-OECD countries and 43,875 tonnes of plastic waste to Mexico. Since each PET plastic waste bale typically

weighs 525 to 630 lbs., this means that California exported 109,276 bales of plastic waste to non-OECD countries and 166,423 bales of plastic waste to Mexico in 2022.[55]

Table 4: 2022 and 2023 California Plastic Waste Exports

6. California Exports Massive Amounts of Contamination Waste to Mexico in Plastic Waste Bales

California has a long, disturbing history of exporting wastes to Mexico due to low-cost trucking, Mexico's low labor costs, and Mexico's lack of enforced environmental regulations.[56] CalMatters has published several investigations showing the significant environmental and health harms of California's hazardous waste exports to Mexico.[57,58]

Less attention has been paid to the massive amounts of waste classified as "non-hazardous" that has been trucked to Mexico as contamination in California's PET bottle and other plastic waste bales. This waste is essentially unrecyclable trash that should have been separated and sent to California landfills. Figure 1 shows the history of California's plastic waste exports to Mexico. Since the implementation of China's Green Fence Policy (2015) and National Sword Policy (2018) that restricted and then prevented plastic waste exports to China, California plastic waste exports to Mexico have skyrocketed from below 5,000 tonnes/yr in 2015 to 43,875 tonnes/yr in 2022 and 37,138 tonnes in 2023 (extrapolated to full year).[59]

Figure 1: California Plastic Waste Exports to Mexico (All Types - HS3915)[60]

Mechanical plastic recycling creates massive amounts of microplastics, volatile organic carbon emissions, and hazardous waste which are not regulated or responsibly managed in Mexico, Turkey, and loweconomic Asian countries.[61,62,63] Fires at poorly regulated plastic recycling facilities in Mexico are common, as evidenced by the recent fire of massive PET plastic waste piles at a plastic recycler near Mexico City called Planta de reciclaje R.G.M.[64]

CalRecycle acknowledges the harms of waste exports to other countries, stating, "Unfortunately, exporting recyclable materials to other countries does not always result in the exported materials being recycled and can also result in negative environmental, economic, and social impacts, especially if the material is contaminated or sent to a place without adequate controls or infrastructure. In some cases, contaminated recyclables are landfilled or dumped into rivers that float into the ocean and migrate into the Pacific Garbage Patch off the coast of California."[65]

The poor operations of one PET bottle recycler in Mexico (ClearPac), which was set up in 2015 byAmerican and Chinese partners in response to China's Green Fence Policy, is an example of the poor performance of plastic recyclers in Mexico.[66] ClearPac has had harmful impacts on both sides of the Mexico and U.S. border, as documented by this report by Noticias de Tijuana, translated from Spanish:[67]

The company generates hazardous waste and sends it to the trash (treatment plant sludge and contaminated rags). The company does not have a record of its wastewater

discharges that leave the treatment plant from a process where sodium hydroxide is used and discharges directly to the sewer.

Photographs and videos attest to the discharges of toxic sludge that the company indiscriminately throws into its drainage so that it in turn circulates through the sewage system until it is thrown into the Tijuana River channel, until it ends up on the beaches of Tijuana. and Imperial Beach, with serious consequences for marine fauna and humans.

According to the San Diego County Department of Environmental Health, residual discharges, such as these, with millions of gallons of contaminated water from Tijuana, have forced the closure of the Imperial Beach coast. This action has prompted Imperial Beach Mayor Serge Dedina to take legal action.

Nongovernmental organizations (NGOs) in Mexico and the U.S. have protested the waste colonialism of export of California plastic waste to Mexico, to no avail.[68,69]

The material characterization of plastic waste bales included in CalRecycle's SB343 Report provide proof of the massive amounts of trash contamination that has been trucked to Mexico under the pretext of recycling.

And yet as noted above and in Table 1, no type of plastic waste bale characterized in CalRecycle's SB343 Report can legally be exported to Mexico due to high contamination rates and mixed plastic shipments. The SB343 detailed material characterization (reproduced in Appendix 2) also shows that PET bales have very high non-PET clear bottle contamination rates: 40% for PET bottle bales and 64% for PET bottle and container bales as indicated in Table 2. Only PET clear bottles can be recycled together, since green and opaque PET bottles and other plastic and non-plastic materials are contamination in clear PET bottle recycling.[70] An average of the two PET bale contamination rates (52% average) enables an estimation of the amount of unrecyclable trash that California has exported to Mexico under the pretense of recycling.

Employing the plastic waste export data in Table 3 and the average PET bale contamination rate of 52%, Table 5 and Figure 2 show the amount of contamination waste that is likely to have been exported to Mexico in PET bales from 2015 through 2023. From 2015 through 2023, we estimate that California has exported 47,129 tonnes of plastic waste to Mexico as contamination in PET bottle bales. That is equivalent to 3,459 truckloads of trash.

Table 5: California Unrecyclable Trash Exported to Mexico in PET Bales

Figure 2: California Unrecyclable Trash Exported to Mexico in PET Bales

Appendix 1: Detailed Assessment of Material Characterization Data to Basel Convention Requirements (All numbers are %)

Appendix 2: Detailed California Plastic Waste Exports in 2022 and 2023 (through November)
The data source is the official U.S. Trade Online Database.[72]

Footnotes:
1 California Code, Public Resources Code - PRC § 42355.51 (https://codes.findlaw.com/ca/public-resources-code/prc-sect-42355-51/)
2 California Code, Public Resources Code § 41781.4 (https://casetext.com/statute/california-codes/california-public-resources-code/division-30-waste-management/part-2-integrated-waste-management-plans/chapter-6-planning-requirements/article-1-waste-diversion/section-417814-plastic-waste-export)
3 CalRecycle, SB343 Material Characterization Study Preliminary Findings, December 28, 2023 (https://www2.calrecycle.ca.gov/Publications/Details/1729)
4 Plastic Recycling Corp. of California, CALIFORNIA PET BALE COMPOSITION ANALYSIS: 2022 UPDATE (https://prcc.biz/download/california-pet-bale-composition-analysis-2022-update/?wpdmdl=13139&refresh=659ddbd931aa11704844249)
5 CalRecycle, “State of Disposal and Recycling in California, Calendar Year 2021” (https://calrecycle.ca.gov/reports/stateof/)
6 USEPA, Volume-to-Weight Conversion Factors, April 2016. Midpoint of 580 lbs/bale assumed for PET bottles (https://www.epa.gov/sites/default/files/2016-04/documents/volume_to_weight_conversion_factors_memorandum_04192016_508fnl.pdf)
7 U.S. Census Bureau, U.S. Trade Online Database, accessed on January 8, 2024 (https://usatrade.census.gov/index.php?do=login)
8 California Code, Public Resources Code - PRC § 42355.51 (https://codes.findlaw.com/ca/public-resources-code/prc-sect-42355-51/)
9 See Decision 14/12 available here in the Report of the 14th Meeting of the Conference of Parties:
https://www.basel.int/TheConvention/ConferenceoftheParties/ReportsandDecisions/tabid/3303/Default.aspx
10 Further if this exception is exercised, all of the three polymers must be "destined for separate recycling of each material and in an environmentally sound manner..."
11 See definition also in Decision 14/12 of listing B3011 (Annex IX) including all footnotes.
12 https://wiki.ban.org/images/8/85/Contamination_Table.pdf, BAN has compiled the known national Basel Party interpretations of the language definition Basel plastic contamination “almost free from contamination”.
13 Basel Convention, Article 4, paragraph 5, “A party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party.”
14 Basel Convention, Article 11
15 OECD/LEGAL/0266 found here:
https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0266
16 https://www.epa.gov/hwgenerators/arrangement-between-government-united-states-america-and-government- canada-concerning
17 Greenpeace, “Acceptance of Unrecyclable Plastic Products and California’s Continued Exports of Plastic Waste

Exports to Non-OECD Countries," May 18, 2021 (https://www.greenpeace.org/usa/research/letter-to-ca-recycling-commission/)
18 Greenpeace, "Acceptance of Unrecyclable Plastic Products and California's Continued Exports of Plastic Waste Exports to Non-OECD Countries," May 18, 2021 (https://www.greenpeace.org/usa/research/letter-to-ca-recycling-commission/)
19 Californians Against Waste, AB881 Overview (https://www.cawrecycles.org/ab881)
20 California Code, Public Resources Code § 41781.4 (https://casetext.com/statute/california-codes/california-public-resources-code/division-30-waste-management/part-2-integrated-waste-management-plans/chapter-6-planning-requirements/article-1-waste-diversion/section-417814-plastic-waste-export)
21 Article 4, paragraph 5, "A party shall not permit hazardous wastes or other wastes to be exported to a non-Party or to be imported from a non-Party."
22 CalRecycle, SB343 Material Characterization Study Preliminary Findings, December 28, 2023 (https://www2.calrecycle.ca.gov/Publications/Details/1729)
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30 United States Census Bureau, US Trade Online (https://usatrade.census.gov/index.php?do=login)
31 United States Census Bureau, US Trade Online (https://usatrade.census.gov/index.php?do=login)
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33 Basel Convention, Article 4, paragraph 3; Article 9.
34 The Last Beach Cleanup, SB343 Assessment (https://www.lastbeachcleanup.org/casb343survey)
35 CalRecycle, Recycling and Disposal Reporting System (RDRS) (https://calrecycle.ca.gov/swfacilities/rdreporting/)
36 Plastic Recycling Corp. of California, CALIFORNIA PET BALE COMPOSITION ANALYSIS: 2022 UPDATE (https://prcc.biz/download/california-pet-bale-composition-analysis-2022-update/?wpdmdl=13139&refresh=659ddbd931aa11704844249)
37 CalRecycle, Plastic Quality Incentive Payment (https://www2.calrecycle.ca.gov/PublicNotices/Documents/13822)

38 California Code, Public Resources Code - PRC § 42355.51 (https://codes.findlaw.com/ca/public-resources-code/prc-sect-42355-51/)
39 The Last Beach Cleanup, SB343 Assessment, Quarterly Data Provide by CalRecycle via Public Records Request (https://www.lastbeachcleanup.org/casb343survey)
40 The Last Beach Cleanup, SB343 Assessment, Survey of Post Consumer Plastic Recyclers (https://www.lastbeachcleanup.org/casb343survey)
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43 The Last Beach Cleanup, SB343 Assessment, Survey of Post Consumer Plastic Recyclers (https://www.lastbeachcleanup.org/casb343survey)
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57 CalMatters, “California exports the risk from its hazardous waste. One neighborhood in Mexico shows the consequences,” December 20, 2023 (https://calmatters.org/environment/2023/12/california-hazardous-toxic-waste-mexico/)
58 CalMatters, “Hidden Hazards: Toxic waste in California,” January 25, 2023 (https://calmatters.org/environment/2023/01/california-toxic-waste-dumped-arizona-utah/)
59 U.S. Census Bureau, U.S. Trade Online Database, accessed on January 16, 2024. 2023 full year extrapolated from data published through November 2023. (https://usatrade.census.gov/index.php?do=login)
60 U.S. Census Bureau, U.S. Trade Online Database, accessed on January 16, 2024. 2023 full year extrapolated from data published through November 2023. (https://usatrade.census.gov/index.php?do=login)
61 Inside Climate News, “Who Said Recycling Was Green? It Makes Microplastics By the Ton,” May 16, 2023 (https://insideclimatenews.org/news/16052023/recycling-plastic-microplastics-waste/)
62 Bloomberg, “Thailand Is Tired of the Noxious Fumes From Recycling Your Trash,” November 11, 2022 (https://www.bloomberg.com/features/2022-thailand-plastic-waste-recycling-import-ban/)
63 Human Rights Watch, “It’s As If They’re Poisoning Us,” September 21, 2022 (https://www.hrw.org/report/2022/09/21/its-if-theyre-poisoning-us/health-impacts-plastic-recycling-turkey)
64 Yahoo News, “Firefighters Battle Flames at Plastic Recycling Plant Outside Mexico City,” January 30, 2024 (https://news.yahoo.com/firefighters-battle-flames-plastic-recycling-023958994.html)
65 CalRecycle, “State of Disposal and Recycling in California, Calendar Year 2021” (https://calrecycle.ca.gov/reports/stateof/)
66 Pie de Pagina, “Companies that import plastic garbage to Latin America are denounced for environmental damage,” February 20, 2023. (https://piedepagina.mx/empresas-que-importan-basura-plastica-a-america-latina-son-denunciadas-por-danos-ambientales/)
67 Noticias de Tijuana, “'CLEARPAC' maquiladora in PROFEPA's sights,” April 29, 2021 (https://ndtnoticias.com/maquiladora-clearpac-en-la-mira-de-profepa-¦/)
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69 Grist, “American cities want to recycle their plastic trash in Mexico. Critics call it ‘waste colonialism,’” March 31, 2023 (https://grist.org/accountability/american-cities-want-to-recycle-their-plastic-trash-in-mexico-critics-call-it-waste-colonialism/)
70 NPR, “Sprite ditches its iconic green bottle — but environmentalists say it's not enough,” July 28, 2022 (https://www.npr.org/2022/07/28/1114242535/sprite-green-bottles-recycle)

71 Calculation based on a trash truck loaded with 15 U.S. tons (13.6 metric tonnes) of waste. (https://bigtruckrental.com/garbage-truck-rental-service/how-much-trash-can-a-garbage-truck-hold/)
72 U.S. Census Bureau, U.S. Trade Online Database, accessed on January 8, 2024 (https://usatrade.census.gov/index.php?do=login)

Comment 62:
Name: Maria Rachal
Date received: 2/13/2024
Source: Email (mrachal@industrydive.com)
Email includes attachments: No Comment: Will public comments that CalRecycle receives related to the finalization of the SB 343 Findings Report be posted publicly anywhere, or no?

Comment 63:
Name: Gauravi Saini
Date received: 2/13/2024
Source: Email (gsaini@ReclayStewardEdge.com)
Email includes attachments: No
Comment: Interesting that non-food containing buckets were sorted out at MRFs while buckets that contained food did not. Can you expand on this and why this was?

Comment 64:
Name: Meg Snyder
Date received: 2/13/2024
Source: Email (Unavailable)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Any way I can make the slides less blurry on my end?
Screenshot attached.

Comment 65:
Name: Michael (Mike) Smaha
Date received: 2/13/2024
Source: Email (msmaha@cancentral.com)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment:
Thank you for the opportunity to provide comments on the SB 343 preliminary findings report and participate in the public workshop. Comments from the Can Manufacturers Institute are attached. We look forward to working with you to ensure that metal cans continue to be considered recyclable in California. Best regards, Mike Smaha Vice President, Government Relations Can Manufacturers Institute The Homer Building, 12th 601 13 Th Floor Street, NW Washington, DC 20005 (m): 202-876-4347 www.recyclingrefundswork.org

Attachment text: Thank you for holding this workshop and allowing Can Manufacturers Institute (CMI) to provide comments and ask questions regarding California's SB 343 preliminary findings report released in December 2023. CMI is perplexed by the report's findings for acceptance rates by large volume processors for steel food cans and lids, aluminum bottles non-CRV (assume these are aluminum aerosol cans) and steel aerosol cans. CMI is seeking clarification of the results and to ensure these metal cans are considered recyclable in California.
Steel Food Cans

CMI seeks to understand the acceptance rate findings for steel food cans and lids, particularly "criteria #2" that found only 57 percent of these metal cans are sorted by large volume processors. At the same time, "criteria #1" found that steel food cans are collected in 95 percent of recycling programs that serve at least 60 percent of the state's population. It does not make sense that only 57 percent of large volume processors sort steel food cans into defined streams for sale, while 95 percent of the California population is served by a recycling program that accepts them.

Steel food cans are easy to sort with magnets and have a high value for end markets. CMI is not aware of any processors that do not or are unable to accept and sort steel food cans using magnets. We are also unaware of any processors who are not interested in selling this highly valued commodity that has a demand from a healthy and robust end market.

There is plenty of research providing evidence of steel cans being accepted by large volume processors. A 2021 report from the Sustainable Packaging Coalition (https://sustainablepackaging.org/wp-content/uploads/2022/03/UPDATED-2020-21-Centralized-Study-on-Availability-of-Recycling-SPC-3-2022.pdf) found that 87 percent of recycling programs in the country accept steel food cans. The Recycling Partnership's State of Recycling 2024 report (https://recyclingpartnership.org/wp-content/uploads/dlm_uploads/2024/01/Recycling-Partnership-State-of-Recycling-Report-1.12.24.pdf) finds that recycling processing facilities, referred to in the report as Materials Recovery Facilities or MRFs, have a capture rate of 97 percent for steel cans. The Sustainability Packaging Coalition and The Recycling Partnership released a joint report (https://astrx.org/wp-content/uploads/2019/12/ASTRX-Review-of-Material-Flow-at-MRFs-and-Reprocessors-1.pdf) in 2019 stating that 10 out of 11 MRF operators interviewed said steel cans are a preferred material to collect and process due to their ease of sortation, and market demand and value.

The use of steel food cans is ubiquitous in homes, restaurants, schools and other facilities where food is prepared and served. They are 100 percent recyclable and are widely accepted in local recycling programs, whether through curbside or drop off locations, throughout the country. CMI's concern is that if CalRecycle does not address this inaccurate low acceptance rate then these metal cans would not be considered recyclable by many Californians and they would be discarded into the trash and lost for processing and reuse.

Steel and Aluminum Aerosol Cans

The Sustainable Packaging Coalition report also found acceptance rates at MRFs above 60 percent for both aluminum and steel aerosol cans (62% for steel and 61% for aluminum, respectively). CMI has had conversations with MRFs around the country to learn about their acceptance of steel and aluminum aerosol cans. While not every MRF readily accepts aerosol cans, many do sort them. Based on those percentages, we believe aerosols meet the criteria standards under SB 343 and can be marketed and labeled as recyclable.

Question for CalRecycle

CMI has submitted a public records request for CalRecycle's data, survey questions and results and will use the extended public comment period to review this information. However, CMI would like to know what methods CalRecycle has to modify this report before it is finalized?

Thank you for this opportunity to provide comments and we look forward to working with you on making sure these metal containers continue to be considered recyclable in California.

Please direct any questions to the following CMI contacts: Mike Smaha (msmaha@cancentral.com) or Greg Hurner (greg@hgra.us).

Comment 66:
Name: Johan Berglund
Date received: 2/14/2024
Source: Email (johan@masterclassnetwork.com)
Email includes attachments: No
Comment: Dear Sir/Madam,
My name is Johan Berglund, and I'm an independent packaging consultant dealing with various recycling issues, assisting customers providing e.g. fiber-based packaging.
In relation to SB343 there are many suppliers of packaging that worry their products will be deemed "not recyclable" in the future, and therefore they are doing all they can to improve recyclability and test their packaging to ensure that it is both sorted and recycled as intended.

Could you explain a bit more in detail what kind of evidence CalRecycle will accept when a packaging supplier seeks to demonstrate compliance with the state's criteria for recyclability?

I am for example working with one project where a composite can with 80-90% paper/fiber content, and then thin layers of plastics and aluminum are used (in order to make possible protective barriers that would otherwise require a tin can - a tin can would emit a lot more CO2!). This type of package is widely recyclable in many parts of Europe and easy to repulp if sorted correctly. What steps should concretely be taken to make sure this type of package is recyclable and approved as such also in future California, and again, what kind of detailed "evidence" does CalRecycle need in order to accept it?

Thanks for any assistance!
Johan Berglund

Johan Berglund
Director & Senior Analyst
The Masterclass Network / Mclass Intelligence AB
Tel: +46 (0)705 631 007
Mail: johan@masterclassnetwork.com
Web: www.masterclassnetwork.com
Postal: Hospitalsgatan 12 B
211 33 Malmö, Sweden

Comment 67:
Name: Johan Berglund
Date received: 2/15/2024
Source: Email (johan@masterclassnetwork.com)
Email includes attachments: No
Comment: Thanks, very interesting!
So who makes the ultimate determination in the end?

Comment 68:
Name: Czarina Rosales
Date received: 2/16/2024
Source: Email (Czarina.Rosales@thaiunion.com)
Email includes attachments: No; Non-text item(s) included in body of email are not reproduced here.
Comment: May I ask about this statement à SB 343 (Allen, Chapter 507, Statutes of 2021) provides criteria for when products can be considered recyclable in the state for recycling purposes. CalRecycle does not have the authority to issue rules or guidance regarding those criteria or provide direction on appropriate labeling for specific products. Who then could I inquire about the rules or guidance on the implementation of this law? It is unclear for me if it would apply to the imprint on the mold or not…

Comment 69:
Name: Lisa Huett
Date received: 2/16/2024
Source: Email (lisa.huett@pretiumpkg.com)
Email includes attachments: No
Comment:
Dear CalRecycle,
We are a rigid plastic blow molder and supply packaging to a wide variety of brand owners. We produce in Recycle Code 1,2 & 5 and we have RIC's engraved on the base of each container we produce today inside a chasing arrow.
Based on the preliminary findings report, it seems Recycle Code 1, 2 & 5 for rigid containers will be exempt from any changes and it will be okay to remain inside chasing arrows. I want to make sure we are understanding this correctly, am I missing anything? Is this your interpretation?

Thank you, very much appreciate your feedback.

Please note my new email address: lisa.huett@pretiumpkg.com

Sincerely,
Lisa Huett
Director of Sustainability
Cell 714-488-9310

Comment 70:
Name: Jagpal Takhar
Date received: 2/16/2024
Source: Email (Jagpal.Takhar@gtlaw.com)
Email includes attachments: No
Comment: Hello, I attended the workshop on 2/20 and had a follow up questions. Pursuant to the comments and feedback CalRecycle receives over the next few weeks, will CalRecycle conduct any additional studies prior to publishing the Final SB 343 Findings Report later this year?
Best, Jagpal
Jagpal Takhar
Associate
Greenberg Traurig, LLP
400 Capitol Mall, Suite 2400 | Sacramento, CA 95814
T +1 916.868.0615 | C +1 760.855.7764
Jagpal.Takhar@gtlaw.com | www.gtlaw.com | View GT Biography

Comment 71:
Name: Dieter Eckles
Date received: 2/23/2024
Source: Email (dieter@cascadiaconsulting.com)
Email includes attachments: No
Comment: When will CalRecycle make the following items available and how do we request them: (1) The underlying data used in the calculations; (2) The calculations used to create the data tables
Some of the calculation descriptions are unclear so when the tables present data that is surprising it's hard to determine if my expectations need to be adjusted or it if there is something else going on (like when table 2 says only 1/3 of counties sort for tin cans).
Thank you. -Dieter
Dieter Eckels, Director-Research and Analysis
Cascadia Consulting Group
206.449.1123 office
206.661.3036 cell
dieter@cascadiaconsulting.com
www.cascadiaconsulting.com

Comment 72:
Name: Czarina Rosales

Date received: 2/27/2024
Source: Email (Czarina.Rosales@thaiunion.com)
Email includes attachments: No
Comment: Thank you for the clarification.
I will discuss with our legal to understand the law better.

Comment 73:
Name: Melissa Koshlaychuk
Date received: 2/28/2024
Source: Email (mkoshlaychuk@calstrawberry.org)
Email includes attachments: No; Non-text item incorporated into email body submitted to CalRecycle are not reproduced here..
Comment: So, I have a question regarding the Appendix 7. Could you please explain how Appendix 7 affects the rest of the preliminary study findings? For example, I see PET Thermoform noted in Table 2. In the report as exceeding the 60% collection and processing rates required in SB343, but then in Appendix 7 I see only 54% collection for PET thermoform clamshells. How should I interpret the results indicated in Appendix 7? Does Appendix 7 take precedence over the rest of the report findings?
Thank you!
Melissa
Melissa Koshlaychuk
Public Policy Analyst
California Strawberry Commission
916-841-3789 | mkoshlaychuk@calstrawberry.org

Comment 74:
Name: Margie Lie
Date received: 2/29/2024
Source: Email (margie@samsonlobby.com)
Email includes attachments: Yes
Comment: Good afternoon, please see the attached letter from Origin Materials regarding the SB 343 Preliminary Findings.
Thank you, Margie
MARGIE LIE
Legislative Advocate
She/her
SamsonAdvisors
415-283-7644
margie@samsonlobby.com
1121 L St | Ste. 406 | Sacrament, CA | 95814
www.samsonlobby.com

Attachment Text: Origin Materials
930 Riverside Parkway
Suite 10
West Sacramento, CA 95605
P. 916.231.9329

E. hello@originmaterials.com
originmaterials.com

FEBRUARY 29, 2024
CalRecycle Material Characterization Staff
California Department of Resources Recycling and Recovery
P.O. Box 4025Sacramento, CA 95812-4025
RE: SB 343 Material Characterization Study Preliminary Findings

To Whom it May Concern,
Origin Materials, Inc. (Origin) appreciates the opportunity to submit comments on the Preliminary Findings Report for the SB 343 Material Characterization Study. As leaders in carbon negative materials, sustainable packaging, and creators of all-PET (polyethylene terephthalate) caps and closures for food and beverage containers, we want to reiterate the importance of both collecting PET and the inclusion of PET forms within the material characterization study for consideration of the resin to be labeled as recyclable.

Introduction
Headquartered in West Sacramento, Origin is the world's leading carbon negative materials company with a mission to enable the world's transition to sustainable materials. Our innovative technologies include all-PET caps and closures that bring recycling circularity and enhanced performance to a ~$65 billion market, specialty materials, and our patented biomass conversion platform that transforms carbon into sustainable materials for a wide range of end products addressing a ~$1 trillion market. In 2023, Origin Materials announced the creation of an all-PET bottle cap, which can be produced with any kind of PET, including recycled PET. This cost-competitive design aids in the production of monomaterial products which are typically easier to recycle. Origin's all-PET caps offer improved performance compared with incumbent caps, enabling lighter cap weight and improved product shelf life.

Background
Governor Newsom signed into law Senate Bill 343 (Allen, Chapter 507, Statutes of 2021) in September of 2021, which prohibited the use of recyclability indicators on products and packaging unless specified criteria for recyclability are met. Under the law, CalRecycle is required to publish data about material types and forms that are recycled to inform if a product or packaging is considered recyclable in the state. A product or packaging may be considered recyclable if the material type and form is both:

1. Collected for recycling by jurisdiction recycling programs that encompass at least 60 percent of the state's population.

2. Sorted into defined streams for recycling by large volume transfer/processing facilities that serve at least 60 percent of recycling programs statewide.

In December 2023, CalRecycle released the preliminary findings for the material characterization study. The data analyzed contains multiple types and forms of PET that

are collected at local jurisdiction recycling programs and large volume transfer processors such as PET Clear Bottles – non-CRV, PET Pigmented Bottles – non-CRV, PET Thermoformed Clamshells and Containers, Other PET Clear Single-Use Rigids, and more.

Comment
Origin Materials is encouraged by the data demonstrated in the preliminary findings on PET and would like to emphasize the importance of including PET in its various types and forms within the material study for purposes of complying with SB 343.

Origin has long recognized the ease with which PET can be recycled and the potential for the material type to be circular and sustainable. It is also the most ubiquitously used and recycled polymer. With this, Origin has invested in PET related technology for over 10 years, by creating a PET made from biomass and creating the first commercially scalable, patent-pending PET bottle cap. Origin announced its all-PET caps and closures business in August 2023, after developing the packaging solution for several years as a natural outgrowth of Origin's mission and its polymer expertise and platform development capability.

With the passage of AB 793 (Ting and Irwin) in 2020 and SB 54 (Allen) in 2022, the post-consumer recycled content PET market has and will continue to grow. According to the National Association for PET Container Resources (NAPCOR) 2022 PET Recycling Report, the US recycled PET at 29% in 2022 with an indication that demand for rPET is strong, at over 50% of end market consumption in the US and Canada in bottle markets.1 With growing demand for rPET, it's of paramount importance that both recycling infrastructure continue to collect PET and consumers be made aware of PET's recyclability through recycling indicators on product labels. Origin welcomes the incorporation of PET in the preliminary findings as a first step to help support this emerging market.

1NAPCOR 2022 PET Recycling Report, https://napcor.com/news/2022-pet-recycling-report/

Conclusion
Thank you for the opportunity to provide comments related to the SB 343 Material Characterization Study Preliminary Findings. We look forward to continuing to work with CalRecycle as the department continues to implement SB 343.

Warm regards,
Dr. Alex Ward
Director, Public and Institutional Partnerships
Origin Materials, Inc

Comment 75:
Name: Melissa Koshlaychuk
Date received: 2/29/2024
Source: Email (mkoshlaychuk@calstrawberry.org)

Email includes attachments: No
Comment: I am sorry to be doing this in piece meal. Each day I spend a little more time reading through the reports and state statutes and end up with so many questions. When you have a moment, I would much appreciate if you could help me understand the following:
Dec 2023 the SB 343 Material Characterization Study Preliminary Findings were reported.
(1) When will these findings become more than just preliminary, and what does that entail;
(2) Will Cascadia continue to survey the remaining LVTPs to finalize the study, and that becomes the final report to be published later this year I think? It was noted in the report that 27 of the LVTPs information was used and that there were limitations to gathering jurisdictional information;
(3) Or will the report be the same data in the preliminary study published in Dec 2023, with public commentary considered.
I hope my questions are clear, and if they aren't please feel free to give me a call on my cell phone! I appreciate your help.

Thank you!
Melissa
916-841-3789
Melissa Koshlaychuk
Public Policy Analyst
California Strawberry Commission
916-841-3789 | mkoshlaychuk@calstrawberry.org

March 2024

Comment 76:
Name: Annalee Akin Augustine
Date received: 3/1/2024
Source: Email (AAugustine@caladvocates.com)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Good afternoon,
On behalf of the organizations listed on the attached letter, please find a letter attached with initial questions regarding the SB 343 Preliminary Findings Report.
We appreciate your time and attention. Please do not hesitate to reach out to myself, Annalee Augustine at aaugustine@caladvocates.com, or John Hewitt, of Consumer Brands Association and cc'd here at jhewitt@consumerbrandsassociation.org, if there are any questions.
Thank you,

Attachment Text: The undersigned organizations appreciate the extension of the Senate Bill 343 (SB 343) [Allen, Chapter 507, Statutes of 2021] Preliminary Findings Report public comment period timeline and look forward to continued engagement with CalRecycle throughout the SB 343 implementation process. Our organizations believe

that the deadline extension, in addition to information delineated by the below questions, will contribute to comprehensive and informed stakeholder feedback. Our organizations have been engaged in Senate Bill 343 since its legislative introduction. SB 343 requires the California Department of Resources Recycling and Recovery (CalRecycle) to conduct and publish a characterization study of materials collected, sorted, sold, or transferred for recycling in California.

The SB 343 Preliminary Findings report provides the initial results from data CalRecycle collected to provide information to evaluate whether a product or package is “recyclable” in California. These preliminary findings include information from local jurisdictions on the materials accepted by their recycling programs, survey results detailing the recovery activities at California large volume transfer/processors (LVTPs) and the results of material characterization sampling of recyclable materials at LVTPs statewide. Information provided in this report may be utilized by CalRecycle to evaluate if materials meet criteria to be labeled or marketed as recyclable established in Public Resources Code (PRC) sections 42355.51(d)(A) and 42355.51(d)(2)(B)(i). Whether or not a packaging type or form meets the criteria to be labeled or marketed as “recyclable” in California will significantly impact the ability of California producer companies to meet their circularity goals, as well as the mandates contained in state laws such as those contained in Senate Bill 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act [Allen, Chapter 75, Statutes 2022]. Beyond profoundly impacting the ways in which companies conduct business in the state, the results of the SB 343 Preliminary Findings Report will affect brand to consumer dialogue and will ultimately serve to either limit or promote participation in the state’s recycling system.

Given the significance of the preliminary findings report results to consumers, businesses, and other stakeholders within California, our organizations aim to provide holistic, contributory feedback in order to support successful implementation of SB 343 and the achievement of goals expressed within the legislation. In order to do so, additional information absent from the published SB 343 Preliminary Findings Report results is fundamental. The undersigned organizations believe specific follow up or additional published information in response to the questions below is crucial.

1. Will the final report interpret the preliminary data included in the preliminary report? In other words, will the final report provide guidance as to what types of the materials studied are recyclable in California so manufacturers are not forced to interpret the data and make the determination on their own? CalRecycle analyzed material types under general materials, types of glass, metal, fiber, plastics, and miscellaneous, with 89 total unique categories. Will the final report assign a recyclability or non-recyclability designation to each of the 89 categories?

2. For the preliminary report, data collection was conducted to gather information on material types and forms that are recovered by large volume transfer/processors (LVTPs) in California. CalRecycle generated a list of 50 facilities that were permitted LVTPs with average quarterly potential reuse outflows of over 4,000 tons. Will CalRecycle provide the full list of large volume/transfer processing facilities in the state

of California? How does CalRecycle determine which facilities to choose for the data collection and will this information be provided in the final report?

3. Table 2 shows the Recovery of Material Types and Forms, by counties and populations served by surveyed LVTPs. Of the 37 surveyed facilities, only 10 facilities were selected for sampling and sorting in August 2023. CalRecycle, via a contractor, conducted sampling and sorting at the 10 facilities. If CalRecycle only sampled at 10 facilities, how does this data translate to covering data for all large volume/transfer processing facilities that serve at least 60 percent of the recycling programs statewide?

4. How did CalRecycle interpret the implicit collection of material types not explicitly called out by an LVTP? Example: When a material recovery facility (MRF) says they collect film - which covered material category (CMC) was captured as there are multiple film collection categories?

5. Under the new Public Resources Code Section 42355.51, in order to use a recyclability representation, the product must be "of a material type and form that routinely becomes feedstock used in the production of new products or packaging."1 "Routinely" is not defined. It seems that Appendix 8 – rare materials in outflows, may be trying to get at this but it's ultimately unclear. Will CalRecycle clarify which material types and forms "routinely" become feedstock?

6. How is the determination of whether a material is in the outflow related to the determination of whether the material is routinely used in feedstock? The CalRecycle website claims the report addresses "what types of material routinely become feedstock" but the report itself does not use the word feedstock once. Instead, it focuses on outflow. Are the terms used interchangeably? Will they be defined in the final report?

7. In order to use a recyclability representation, "[t]he material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities . . . that process materials and collectively serve at least 60 percent of recycling programs statewide[.]" However, Table 2 in the report only looks at what is sorted into defined streams at 37 facilities in 30 out of 58 counties. Isn't the total number of statewide recycling programs necessary to determine what makes up at least 60 percent? Even if it's sorted in 37 of 37 facilities surveyed it's unclear whether that meets the 60% threshold. Appendix 7 looks at statewide results but it does not give a metric of statewide recycling programs, just statewide population and percentage of counties statewide.

8. For mixed waste collection jurisdictions, recyclability advertising shouldn't have any impact on whether a product is actually recycled, correct? What percentage of the population in California resides in mixed waste collection jurisdictions? Is this factored into the requirement that to be considered recyclable, the product or packaging must be the material type and form that is collected for recycling by recycling programs for jurisdiction that collectively encompass at least 60 percent of the population of the state? In other words, should SB 343 apply to jurisdictions that are mixed waste collection jurisdictions at all? If so, why?

9. California Senate Bill 343 contains the following clause, “(B) (i) To get a representative sample of recycling programs in the state, the department shall conduct and publish on its internet website a characterization study of material types and forms that are collected, sorted….”2 It is not clear what the characterization study is intended to mean for the recyclability test set out in SB 343. Currently stakeholders cannot see how this information has been used; can this be delineated?

10. There are several tests that could/need to be met to enable a type and form of packaging to be labeled as recyclable. For example, “(5) (A) Before January 1, 2030, notwithstanding paragraphs (2) and (3), a product or packaging not collected pursuant to a curbside collection program is recyclable in the state if the non-curbside collection program recovers at least 60 percent of the product or packaging in the program and the material has sufficient commercial value to be marketed for recycling and be transported at the end of its useful life to a transfer, processing, or recycling facility to be sorted and aggregated into defined streams by material type and form.”3 The preliminary report only covers two of these tests:

1 See Cal. Public Resources Code § 42355.51

2 See Cal. Public Resources Code § 42355.51 (5)(A)

3 See Cal. Public Resources Code § 42355.51 (d)(1)(B)(i)

a. 60% of population has programs that accept the material.

b. Type and form of packaging is sorted into defined streams by large volume transfer facilities that cover at least 60% of communities.

How is CalRecycle seeking to apply the other tests to this analysis?

11. California Senate Bill 343 states, “(B) (i) The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020, that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.”4 What is meant by “collectively serve at least 60 percent of the recycling programs”? Why is the criteria here different from the 60 percent of the population under the access requirement?

12. The choice of individual material categories appears to be inconsistent between “Table 1: Proportion of Statewide Population that Accepts SB 343 Material Types” and “Table 2: Recovery of Material Types and Forms, by Counties and Population Served by LVTPs.” There are also missing data points for some categories in Tables 1 and 2. How should recyclability be construed if there are missing data points?

13. The way the bill is constructed means that a small number of categories may not have been identified as collected by 60% of the population because it is not clear in collection scheme guidance (potentially because the guidance is outdated), but when

those items are collected, they will be sorted to a recyclable grade. For example, aluminum bottles should be readily recyclable and if marked as recyclable, they would be perfectly reasonable for recycling. How does CalRecycle interpret the meaning of the Bill in regard to these types of issues?

14. Tables 3A to 3D in the report appear to be the results of the characterization study. It is not clear how these tables should be read to indicate whether a category is recyclable or not. The aluminum bottle example is applicable again here. The category does not exist in “Aluminum UBCs Outflow” where you might expect some aluminum bottles. Is that because there were no bottles present or is it because it wasn't a surveyed category? Aluminum bottles do appear in small amounts in the “other aluminum” outflow. How should these figures be read in terms of recyclability?

15. Are manufacturers expected to have a separate label for California only? What if state requirements differ? For example, Michigan law requires all plastic products sold within the state to be labeled with the resin code within the chasing arrows symbol and imposes a $500 civil fine per violation.5 Once CalRecycle publishes the final study, a product may be prohibited from using the chasing arrows symbol in California, yet required to use it in another market such as Michigan.

Thank you again for the opportunity to provide comments on the SB 343 Preliminary Findings Report. We aim to provide comprehensive, contributory feedback on the preliminary findings report results to support the employment of the state’s “Truth in Labeling” law and believe the answers to the above questions are essential components to achieving this goal.

4 See Cal. Public Resources Code § 42355.51 (d)(2)(B)(i)

5 See Mich. Comp. Laws §§ 324.16102(1), 324.16104(1)

Please do not hesitate to contact us if you have any questions regarding this request.

Thank you for your consideration.
Sincerely,
Agricultural Council of California
Air Conditioning Heating & Refrigeration Institute
American Chemistry Council
AMERIPEN
CalChamber
California Grocers Association
California League of Food Producers
California Manufacturers & Technology Association
Chemical Industry Council of California
Consumer Brands Association
Consumer Technology Association
Council for Responsible Nutrition
Dairy Institute

Flexible Packaging Association
Household and Commercial Products Association
Personal Care Products Council
Pet Food Institute
The Toy Association
Western Plastics Association

Comment 77:
Name: Dennis Hays (dennishays0@gmail.com)
Date received: 3/3/2024
Source: Email
Email includes attachments: No
Comment:
Hi, The labels on plastics identifying which items are recyclable are confusing. Couldn't we add a simple yes, no and maybe label. Yes for generally accepted as recyclable, no for generally not recyclable and maybe for items that need to be checked out locally. Thanks Dennis

Comment 78:
Name: Chris van Rossem
Date received: 3/5/2024
Source: Email (chris.vanrossem@circularaction.org)
Email includes attachments: No
Comment: Hi Dan, As mentioned on our call last week, we wanted to reach out to you regarding the SB 343 Preliminary Findings Report. As the PRO we think it's very important that we have access to any additional information you can make available on the SB 343 Preliminary Findings Report. We are specifically interested in the following, as it will help us better understand the outcomes of the study and how we might need to respond as the PRO:
Characterization results for the "residual outflow destined for disposal" that were sampled from the 10 LVTPs

Any additional information pertaining to the methodology used by CalRecycle for considering the presence of a Material Type and Form (MT&F) in a defined stream (i.e., what criteria needed to be met and what MT&F met and did not meet each of the criteria)

Mapping of the MT&Fs to the Covered Material Categories (CMCs)

The number of sites where additional sampling and sorting was conducted after the release of the preliminary findings report, and how this new dataset will be included in the existing results

How the 29 surveyed LVTPs correspond to the 30 Counties (which counties send their materials to the 29 facilities)

Any information on how sites surveyed are representative of the State as a whole

The survey responses from the 37 of the 50 permitted LVTPs that were interviewed

Any information that can help us understand the determination that tin/steel cans do not meet the sorting criteria because only 10 of 30 counties are sending this material to facilities that are sorting it into a defined metal commodity.

We are sending this request as a follow up to your comments in the February 13th workshop that suggested that CalRecycle could provide some information without a formal request. If some of this information requires us to go a more formal route, please let us now. Ideally, we would like the information listed above, and any and all information CalRecycle is sharing with other stakeholders, to ensure we are well apprised of all the questions that are being contemplated by others.

Lastly, we would be grateful if you could clarify for us what the formal consultation opportunities will be following the April 2nd comment submission deadline. Specifically, will there be another opportunity to submit comments following CalRecycle's "formal public meeting to present the preliminary findings" which we understand will take place sometime in April?

Shane or I would be happy to chat further with you on this if you require further context.

Sincerely, Chris

Comment 79:
Name: Brad Braddon
Date received: 3/8/2024
Source: Email (Brad.Braddon@tekni-plex.com)
Email includes attachments: No; Non-text item incorporated into email body submitted to CalRecycle are not reproduced here..
Comment: Dear CalRecycle, Currently Tekni-plex is doing our best to label our products correctly based on guidance from SB343 (https://www2.calrecycle.ca.gov/Publications/Details/1729). We have 2 products that are technically recyclable, but we are uncertain if they are collected and recycled due to the fact that there is no category listing with a perfect matching description. We are looking at the SB343 regulations and the answer depends on category. We are looking for some guidance as to which category these product belong.
The first is a new paper based lidding seal:

This new seal design eliminates the use of plastic for many lidding applications.

We are asking if our new "recyclable/repulpable" paper-based liners, certified as such by the WMU (Western Michigan University) are recyclable under the new SB343 classification.

This new structure is mostly paperboard (88%), water-based adhesive and sealing lacquer (2%) and a 1 mil aluminum foil (10%) to promote induction sealing capabilities. Reading the "recyclable" classification/percentages of SB343 , released last December-2023 creates some uncertainty depending in which category we use including:

TABLE 1. Proportion of Population for PAPER/FIBER:

other mixed paper: 95%

composite foodservice paper & packaging: 17%

TABLE 2. Recovery of Materials and Population for FIBER:

Other Mixed Paper: 93%

It is important for TP and our customers to understand what is exactly falling under "other mixed paper" so we can give 100% confidence to them about the status.

We are looking to understand the category so we can use the December 2023 SB343 recycling chart to make our determination and appropriate label. Is this product “other mixed paper”?

The second is an expanded polypropylene meat tray.

This is a new product designed to replace polystyrene meat trays that are not recyclable in California. There is a similar product in the market by another manufacture. Perhaps CalRecycle is familiar with a PP foam cup and has identified the category for this item. The cup is not a Tekni-Plex product, we are sending this as an explanation to help describe the new meat tray that we are developing made from expanded PP.

We are looking to understand the collection category so we can use the December 2023 SB343 recycling chart to make our determination and appropriate label.

Comment 80:
Name: Chris van Rossem
Date received: 3/12/2024
Source: Email (chris.vanrossem@circularaction.org)
Email includes attachments: No
Comment: Hope you are well. Just following up to see if you had a chance to review our questions and request for supporting data on the SB 343 Preliminary Findings Report.

Comment 81:
Name: Chris van Rossem
Date received: 3/12/2024 (chris.vanrossem@circularaction.org)
Source: Email
Email includes attachments: No
Comment: I received an out of office notice from Dan Brown that directed inquires to you. Please see our questions and request for data regarding the SB 343 Preliminary Findings Report.
Your assistance with this request is very much appreciated.

Comment 82:
Name: Jae Bin

Date received: 3/13/2024
Source: Email (jbin@apackgroup.com)
Email includes attachments: No
Comment: Hi there, My name is Jae, and I'm a packaging engineer at APG, a B2B company specializing in personal and beauty packaging. Our commitment to sustainability and environmental responsibility is at the forefront of our operations, particularly in the recyclability of our products.
We are seeking guidance on the value and recognition of certifications from recycling facilities. We are particularly interested in understanding whether these certifications are beneficial for our business and affiliates, and would greatly appreciate any recommendations or insights you can provide on this matter. Type of products that we would like to get certificated are sprayer, mist pump, lotion pump, etc. It would be great if we can send you some samples to check recyclability.

Certifications that I found are Cradle to Cradle, and UL Ecologo, and I'm wondering if those would be helpful for recycling organization. It would be great if you could also recommend which certifications are helpful to be certified, or you have your own certifications that we can get.

Your expertise and advice would be invaluable to us as we strive to make more informed decisions in our pursuit of sustainability and environmental stewardship.

Thank you very much for your time.
Best, Jae Bin
APG Packaging
1350 Mountain View Circle
Azusa CA 91702
phone: +1 (626) 385-5858
apackgroup.com

Comment 83:
Name: Chris van Rossem
Date received: 3/15/2024
Source: Email (chris.vanrossem@circularaction.org)
Email includes attachments: No
Comment: Hoping that you can send the supporting data for the 343 Preliminary Finding Report today. Jennifer Haynes White had mentioned that CalRecycle could provide the records that contain the information used for the SB 343 report, along with some documents outlining the methodology used in the preliminary report, and that these could be provided straightaway, since they have previously been disclosed as part of PRA requests.

Comment 84:
Name: Greg Hurner
Date received: 3/14/2024
Source: Email (greg@hgra.us)
Email includes attachments: No

Comment: We have gone through the spreadsheets and have some questions as we can't get the results that CalRecycle issued in the report.

Would you have time to conduct a zoom call with us so that we can better understand the data and the end result?

Comment 85:
Name: Kate Bailey
Date received: 3/18/2024
Source: Email (katebailey@plasticsrecycling.org)
Email includes attachments: No
Comment: Several of our APR members have asked for additional clarification regarding the waste characterization study and plastic caps that remain on the bottles. Screw-on plastic caps, such as those on water bottles, shampoo bottles, etc. are accepted for recycling when attached to the bottles. They are included in the bale specs for rigid containers as well (when attached to the container). The APR Design Guide directs manufacturers on which resin(s) to use to ensure the caps are easily separated and not a source of contamination.

We were not able to find any mention of whether the attached caps were included in the

designation of PET, HDPE, and PP rigid bottles that are deemed recyclable. Are you able to provide clarification on the status of attached plastic caps? Our members are looking for clarification that a rigid PET, HDPE, or PP container with an approved cap still attached to the bottle would fall under the category of recyclable that was givein to PET, HDPE, and PP rigid containers.

It is our understanding that loose caps not attached to the bottles are not acceptable as this is covered under the line item for products under 2”.

The APR will be submitting public comments but first wanted to reach out to see if there was any information available on this question to date.

Thank you so much for your time and all your work on this important rulemaking,

Comment 86:
Name: Jae Bin
Date received: 3/18/2024
Source: Email (jbin@apackgroup.com)
Email includes attachments: No
Comment: Hi there, Well noted.
Thank you very much for your advice.
I’ve come up with few questions after read through the link you provided regarding SB343.

After checking, our products meet the criteria. Could you please help to elaborate on the state “… unless the items are regularly collected and processed for recycling in the

state”? Is this mean that it requires some sort of system to collect them specifically and recycle them? Or collecting them by blue recycling bin is okay?

Let’s say our products have recycling label according to the criteria. How would these be found that it meets the criteria? Also, is the recycling label(triangle arrows) good enough to say our products are recyclable or are there any other labels would be helpful to tell that those are recyclable?

I will ask legal side to an attorney, but it would be great if you could help to advise above questions. Thank you again for your time.

Best, Jae Bin

APG Packaging
1350 Mountain View Circle
Azusa CA 91702
phone: +1 (626) 385-5858
apackgroup.com

Comment 87:
Name: Mark Watts
Date received: 3/20/2024
Source: Email (Mark.Watts@churchdwight.com)
Email includes attachments: No
Comment: Could I please ask for a position of clarity on SB343 and the preliminary Findings report. We have Arm & Hammer HDPE laundry bottles for liquid laundry with HDPE PCR.
Statewide Percentage of population accepting the category in table 1 shows HDPE Pigmented Single-Use Rigids at 94% for recycling

Materials collected for recycling (table 2) shows HDPE Pigmented Single[1]Use Rigids is sorted by 100% of the counties and 100% access to sorting Material outflow in table 3D HDPE Pigmented Single-Use Rigid is at 72%

Based on these numbers, it appears we have a widely accepted and recyclable format for California. This would therefore meet the certain criteria not to be misleading on the use of the resin identification code with chasing arrows.

My question is therefore, that the information supports the use of the chasing arrows recycling symbol on the packaging. Can you please confirm this statement holds true, and I can leave the symbols on the container molds at this time.

Regards, Mark Watts – Sr. Research manager – Packaging Innovation & Sustainability
Church & Dwight Inc., 469 N. Harrison Street. Princeton NJ 08543
Cell: 609.240.2201 Office: 609.806.7664 email: mark.watts@chaurchdwight.com

Comment 88:
Name: Jonathan Levy

Date received: 3/24/2024
Source: Email (Jonathan.Levy@paktech-opi.com)
Email includes attachments: Yes
Comment: Dear Ms. White, Thank you for giving us this opportunity to offer our comments related to the SB 343 Preliminary Findings. Please feel free to reach out to us or we can provide additional feedback. Thanks, Jonathan

Jonathan Levy
PakTek
Manager of Sustainability and Public Policy
458-234-7047

Attachment text: RE: SB 343 Preliminary Findings Report Information Session
Submitted by:
PakTek
Jonathan Levy
Manager of Sustainability and Public Policy
Jonathan.Levy@paktech-opi.com

March 24, 2024

Ms. Jennifer Haynes White
CalRecycle
Senior Environmental Scientist (Supervisory)
Knowledge Integration Section
1001 I Street
Sacramento, CA 95814

RE: SB 343 Preliminary Findings Report Information Session

INTRODUCTION

PakTech would like to thank CalRecycle for giving us an opportunity to share our thoughts related to the SB 343 Material Characterization Study Preliminary Findings (SB 343 Staff Report). Specifically, we plan to pose several questions related to the study and how it is linked to, and serves as the source document for, California's Plastic Pollution Prevention and Packaging Producer Responsibility Act Covered Materials Category List (SB 54 Staff Report).

Founded in 1991, Paktech is a manufacturer of HDPE plastic handles that exclusively utilize recycled resin as a feedstock. With facilities located in Eugene, Oregon, PakTech's products are made from post-consumer HDPE resin (PCR HDPE) sourced from curbside collection programs. Using PCR HDPE feedstock is part of our commitment to sustainability and ensuring this material remains in the circular economy. PakTech's commitment to sustainability doesn't end in its use of recycled resin in the manufacture of its product. From purchasing shipping containers and boxes that contain recycled fiber, to using energy efficient and sustainable power sources, to sustainable water use, we are committed to utilizing sustainable business practices

throughout the manufacturing process. Our commitment to sustainability and good manufacturing procedures demonstrates our belief a manufacturing facility can provide a quality product while still being environmentally responsible. It is this commitment to environmental sustainability that has led us to be advocates for SB54.

DISCUSSION

According to CalRecycle's website:

> SB 343 (Allen, Chapter 507, Statutes of 2021) builds on SB 1335 and creates new information sources that CalRecycle will use to help establish recyclability standards for SB 54.[1]

As SB 343 serves as the source material for the state's landmark producer responsibility program, we will focus on the categories listed in both the SB 343 Preliminary Findings Report and the draft regulations and Covered Material List which was released for SB 54.

> 1. SB 343 Staff Report and SB 54 Staff Report Material Lists Are Different, Which May Cause Confusion
>
> As stated on CalRecycle's website and again in its Recyclability Status of Covered Material Categories SB 54 Report to the Legislature:
>
> > SB 54 requires CalRecycle to use criteria established by SB 343 (Allen, Chapter 507, Statutes of 2021) to evaluate the recyclability of covered material categories (CMCs).[2]

This intricate tying of the two statutes together is of particular note; and although SB 343 serves as source material for SB 54, both lists use different nomenclature and different category definitions. We find it very confusing to work between both lists and keep track of the various material categories. We suggest that CalRecycle develop a "master list" which could be used in both draft products. This will provide essential clarity to participants across the industry.

> 2. SB 343 Staff Report Should Use Industry Standard Nomenclature to Standardize Identification of Materials.
>
> One of the principal purposes of the SB 343 list is to determine the recyclability of a package. One of the criteria being used to determine recyclability is whether it is "sorted into defined streams for recycling processes…"[3]

Although the staff report indicates that "sorted into defined streams" means "materials were consistently sorted into outflows destined for further processing"[4] it also indicated that each facility uses unique terminology to describe the same package type. We suggest it would make more sense to follow acknowledged industry standards such as ISRI's Scrap Specifications[5] or APR's Model Bale Specifications[6]. Such industry standards give recycling facilities an indication of what the industry wants and how it

should be prepared, in other words, how it is “sorted into a defined stream”. It also allows for updates to the specifications to be automatically reflected in the regulation. We suggest that CalRecycle keep this in mind moving forward.

We also would like to stress that, while CalRecycle is fulfilling a mandate that is specific to California, due to its prominence, the entire country is watching the progress California is making with these regulations. As such, many stakeholders that are not operating in California may have difficulty following along with nomenclature that is California-specific. Adhering to industry standard specifications that are used nationally, and in some cases internationally, will make the process much easier for all stakeholders regardless of where they are headquartered.

3. Clarification of Material Type and Form Definitions

As stated earlier, it is confusing that both SB 343 and SB 54 utilize different nomenclature for the same type of package. For example, in the SB 343 Staff Report, we believe that PakTech’s product would fall under category “PL14” which is described as “HDPE Pigmented Single Use Rigids”.

This category is defined as:

> HDPE Pigmented Single-Use Rigids means pigmented plastic bottles, jars, and other rigid containers that are marked HDPE (2). Does not include durable containers. The plastic is a solid color, preventing light from passing through it. Includes only material clearly identifiable as singleuse[7]

While the example list states:

> Examples include Pigmented bottles jugs, jars…4-or 6-carriers for aluminum beverage cans…[8]

The definition and the example list are slightly uncoordinated as an HDPE carrier handle is not a container but a component that is usually affixed to the container. The definition defines only containers while the example list includes carrier handles.

In order to bring both the definition and example list into harmony, we suggest the definition be amended as follows:

> HDPE Pigmented Single-Use Rigids means pigmented plastic bottles, jars, other rigid containers and rigid plastic component parts such as 4 or 6 carriers for cans and bottles that are marked HDPE (2). Does not include durable containers. The plastic is a solid color, preventing light from passing through it. Includes only material clearly identifiable as single-use.

Since this category is found to be serviced by 100% of the counties surveyed and 100% of the population has access to sorting of this material[9], we believe that not only should PL14 be deemed recyclable, it should be included in the curbside bin.

4. The Findings Report Does Not Give an Indication of What Items Should Be Considered Recyclable and/or Included in the Curbside Bin

Because the SB 343 Staff Report provides source data for the SB 54 Covered Materials Categories List, it is entirely appropriate for the SB 343 Staff Report to provide guidance on what materials can be considered recyclable and should be included in the curbside bin.

In fact, the SB 343 Staff Report declares that information contained in the report can be used for such purposes.

Information provided in this report may be utilized to evaluate if materials meet criteria to be labeled or marketed as recyclable established in Public Resources Code (PRC) sections 42355.51(d)(A) and 2355.51(d)(2)(B)(i).[10]

Adding such guidance could be done easily by amending either the table in Appendix 1 and/or Appendix 4 with columns that read “Recyclable Y/N”, and “Can Be Included in Curbside Programs Y/N”. A similar column can be found in the SB 54 CMC list. Such easy to reference tables would add clarity to the report and provide the guidance that SB 343 is intended to do – to determine according to specific criteria if an item is recyclable and if it should be included in a curbside program. At the current time, the SB 343 Staff Report leaves much to interpretation which may lead to unnecessary confusion.

CONCLUSION

We thank CalRecycle for giving us the opportunity to share our thoughts with regard to the draft SB 343 staff report. We hope our comments are taken into account and understand we are providing these thoughts in a spirit of comity and desire to improve upon an already stellar report.
We stand ready to provide more information with regard to our products and how they are typically manufactured and used. Should CalRecycle have any additional comments, please feel free to contact us.

Footnotes:

1 CalRecycle, http://tinyurl.com/yusss2wr
2 CalRecycle, Recyclability Status of Covered Material Categories SB 54 Report to the Legislature, December 2023, 1
3 CalRecycle, SB 343 Material Characterization Study Preliminary Findings, December 2023, 3.
4 CalRecycle, SB 343 Material Characterization Study Preliminary Findings, December 2023, 9.

5 Institute of Scrap Recycling Industries, https://plasticsrecycling.org/model-bale-specifications
6 Association of Plastics Recyclers, https://plasticsrecycling.org/model-bale-specifications
7 CalRecycle, SB 343 Material Characterization Study Preliminary Findings, December 2023, 82.
8 Ibid.
9 CalRecycle, SB 343 Material Characterization Study Preliminary Findings, December 2023, 17.
10 CalRecycle, SB 343 Material Characterization Study Preliminary Findings, December 2023, 3.

Comment 89:
Name: Jan Dell
Date received: 3/27/2024
Source: Email (lastbeachcleanup@gmail.com)
Email includes attachments: No
Comment: Hi Daniel,
Thanks for explaining the approach that CalRecycle took in determining the jurisdictions (counties) that had populations that were covered by facilities who sort for a specific material type and form. I now understand what is written on pages 8 and 9 of the December 2023 report. I now understand that if just one MRF/LVTP in a county claimed to have sorted for a specific material type and form, it was assumed that 100% of the County population was covered.

One follow-up question for you. As you know, a single MRF could serve multiple counties. For the Agua Mansa MRF example below, it serves LA, Orange, Riverside and San Bernardino counties. Under the protocol used in the December 2023 report, if Agua Mansa claimed that it sorted PP5, would you count that all four counties were served for sorting PP5? Or would you just count the county that Agua Mansa is located in (San Bernardino)?
Many thanks,
Jan
Jan Dell
Independent Engineer
The Last Beach Cleanup
Email: lastbeachcleanup@gmail.com
www.lastbeachcleanup.org

Comment 90:
Name: Jordan Fengel
Date received: 3/28/2024
Source: Email (Jordan.Fengel@cartoncouncil.org)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: On behalf of the Carton Council of North America (CCNA) President, Ed Klein, we sincerely thank CalRecycle staff for producing this complex first-of-its-kind

study, for responding to our data request, and for meeting with us to discuss the methodology details and our concerns. The report's findings on aseptic and gable top food and beverage carton recyclability are crucially important to CCNA and our customers. Attached are our comments pertaining to the SB 343 preliminary findings report. We look forward to our continued engagement with the CalRecycle 343 Study Team and thank you in advance for your feedback.

Attachment text: To: California Department of Resources Recycling and Recovery (CalRecycle) Waste Characterization and SB 343 Study Team

RE: SB 343 Study Preliminary Findings Dear CalRecycle SB 343 Study Team,

We sincerely thank CalRecycle staff for producing this complex first-of-its-kind study, for responding to our data request, and for meeting with us to discuss the methodology details and our concerns. The report's findings on aseptic and gable top food and beverage carton recyclability are crucially important to the Carton Council of North America (CCNA) and our customers.

We are very concerned that cartons may be erroneously classified as not recyclable. As we discussed, based on CCNA knowledge and data pertaining to California recycling programs, we expected that the CalRecycle SB 343 study would show cartons satisfy both the jurisdiction collection access and facility sorting criteria defining recyclable materials. We believe if local jurisdiction curbside collection programs and MRFs stop accepting cartons for recycling due to their being categorized as not recyclable, the result will be a significant step backwards for recycling in California. It will create barriers to existing carton recycling efforts and impede further expansion of carton recycling in California. This would be counter to CalRecycle's goals, and confusing and disappointing to the public. Further, it would result in substantial negative impacts on the many companies doing business in California who manufacture cartons or use cartons for packaging their food and beverage products.

Following is our feedback and suggestions for revising the SB 343 Preliminary Findings Report with respect to aseptic and gable top cartons. We also provide some brief broad comments intended to strengthen future SB 343 reports and related activities.

Need to Adjust Cartons' Categorization to Align with Jurisdiction Recycling Program Communications, Sorting Practices, and Recycler Industrial Classifications

During our joint meeting, CalRecycle staff mentioned plans to reclassify cartons under the fiber category in the revised SB 343 report. We strongly support this reclassification. This is consistent with how cartons are viewed by recycling industry markets, and also consistent with the classification of cartons under SB 54's Covered Material Categories.

Also as discussed, we recommend that the "X02, Gable-top Cartons - non-CRV" and "X-03, Aseptic Containers - non-CRV" material types and forms be combined into a single "Aseptic and Gable-top Cartons" material type and form.

(Category “X01, Gable-top Cartons/ Aseptics – CRV” already combines the two types of cartons covered under the deposit system into a single carton category.) This is important because:

• Post-consumer gable top and aseptic cartons are collected, processed, and marketed as a single commodity by nearly all community recycling programs and MRFs in the

• U.S. that accept cartons. Collecting both types of cartons together increases material capture and improves economies of scale – a major reason why CCNA has always promoted collection and recycling of both types of cartons as a single material type and form.

• Gable top and aseptic cartons, combined, are recognized as a single commodity grade by the Paper Stock Industries chapter of the Institute of Scrap Recycling Industries (Grade PSI-52). Carton markets producing roofing and/or wallboard also accept bales of aseptic and gable top containers.

• CCNA has conducted research in the past that indicates consumers often have a difficult time differentiating between aseptic and gable top cartons and view them as one container type.

• Lastly, combining the two carton types into one material category enables easier data gathering and determinations of recyclability and recycling effectiveness. Using two different categories can cause challenges in tracking and reporting, and measuring recycling tonnages and rates, since it splits the already relatively low- volume commodity into two even lower-volume commodities.

CCNA Data Supports Revising Estimated Carton Access Rates

It is well known that local recycling program guidance information can sometimes be vague and inconclusive. Consequently, it is understandable that some errors may be made, especially when comprehensively reviewing guidance pertaining to all 89 material types and over 500 California jurisdictions. CCNA’s consultant, Resource Recycling Systems (RRS), has spent multiple years tracking access to carton recycling in California by obtaining documentation of cartons’ inclusion in community curbside and drop-off recycling programs via examination of community websites and program public education materials. This information is maintained by RRS on behalf of the Carton Council in a database along with data from other states, which is updated monthly to account for changes in local recycling programs.

RRS was asked to perform a comparison of Carton Council recycling program data with CalRecycle data, focusing on identifying differences in the characterization of carton acceptance in each jurisdiction. The full analysis methodology and findings are provided in Appendix A. Also, provided separately is a spreadsheet containing URLs for all communities deemed by RRS to have carton recycling access beyond those identified by CalRecycle, plus screen shots of specific website content for selected jurisdictions.

In brief, RRS identified communities determined by RRS to accept aseptic and/or gable top cartons for recycling but not identified as such in data used to compile CalRecycle's preliminary report that was provided to CCNA. These jurisdictions were grouped into five categories:

Group 1: 27 large communities (having populations over 75,000) found by RRS to accept cartons

Group 2: 25 smaller communities found by RRS to accept cartons

Group 3: 6 unincorporated areas (balance of county) where RRS determined that the majority of residents have access to carton recycling

Group 4: 8 communities serviced by haulers and MRFs known to accept cartons but with community website information that says otherwise or doesn't mention cartons

Group 5: 10 communities found to accept cartons by CalRecycle but not found to accept cartons by RRS

Using the same California Department of Finance population data used by CalRecycle, RRS determined the population served by these jurisdictions. The population associated with Group 5 communities was then subtracted from CalRecycle's initial totals and the populations associated with Groups 1 - 4 were added and new access rates calculated.

Table 1 summarizes these findings.

Table 1: Summary of Carton Council Analysis of CalRecycle Preliminary Findings on Carton Inclusion in Jurisdiction Residential Curbside Programs

Based on our comparative analysis calculations, making these changes would increase the CalRecycle estimated access rate (based on percent of CA population) for aseptic cartons to 69% and to 72% for gable top cartons – both of which exceed the threshold of 60% access required by SB 343. Note, too, that we still do not understand why and how CalRecycle adjusted the SB 343 carton access rates downward for purposes of the SB 54 Report to the Legislature and recyclable list. The carton-related findings under the SB 343 categorization system should be exactly the same as those under the SB 54 categorization system. We would appreciate the opportunity to further discuss this with CalRecycle staff.

CCNA Data Supports Revising Determinations on Which Facilities Sort Cartons for Recycling

Similar to carton access rates, CCNA's team has carefully reviewed and worked to update and validate its data on MRFs accepting cartons and how cartons are handled within each MRF. This work has entailed multiple MRF site visits and interviews. We then compared CCNA data with CalRecycle data on whether and how different facilities

sort cartons for recycling. We summarize the pertinent data in Appendix B, under four separate tables:

Table B-1: Facilities Making Grade PSI-52 that Were Targeted in CalRecycle Surveys (identifies 3 facilities where CCNA and CalRecycle information differ)

Table B-2: Facilities Making Grade PSI-52 NOT Targeted in CalRecycle Surveys (identifies another 3 facilities that make a grade PSI-52 but that CalRecycle did not target in its surveys)

Table B-3: Facilities that Sort Cartons with Mixed Paper Targeted in CalRecycle Surveys (identifies 8 facilities targeted by CalRecycle surveys that sort cartons with mixed paper)

Table B-4: Facilities that Sort Cartons with Mixed Paper NOT Targeted in CalRecycle Surveys (identifies 13 facilities that sort cartons with mixed paper but were not targeted by CalRecycle surveys)

Table B-1 shows our understanding of how each facility was “counted” in the CalRecycle Preliminary Findings (based on data in the “Survey_Outflows_091823_clean_ rev0927” file provided to us in response to our public records request).

Table B-3 includes information pertaining to hand sort data from the CalRecycle Preliminary Findings (based on the file “SB3434 MCS Hand Sort Data 2023 S01”).

All tables include the counties served by each facility. For Tables B-1 and B-3, the information is taken from the CalRecycle files “Survey_Juris_1002” and “Data Entry for Site Visits Summer 2023 (RAW Juris Inflows Residential Tab).” For Tables B-2 and B-4, the information is from CCNA. Lastly, for all tables, CCNA supporting evidence is provided.

Following are adjustments that we believe CalRecycle should consider, which would increase the counties served to 18 from the 8 currently reflected in the Preliminary Findings Report.

1. Re-calculate and verify county served percentages (as a surrogate for “programs served”) based on current CalRecycle data.

CalRecycle data provided to us shows that 7 facilities were found to sort both aseptic and gable top cartons to Grade PSI-52, 1 additional facility was found to sort gable top cartons, and 1 additional facility to sort aseptic cartons. Based on review of counties served by each facility as provided by CalRecycle, we count 10 unique counties for aseptic cartons and 16 unique counties for gable top cartons served by these facilities. These counts are in comparison to the Preliminary Findings Report, which in Table 2 (p.15) shows 8 counties for both aseptic and gable top cartons.

Table B-1 shows only 5 facilities that CalRecycle found to sort both aseptic and gable top cartons to Grade PSI-52 because CCNA data indicates that 2 of the CalRecycle identified facilities do not in fact make this grade. The WM Orange facility sorts cartons with mixed paper while the Rainbow facility does not accept cartons. The removal of these 2 facilities does not, however, impact the unique County count that we arrive at (10 for aseptic cartons and 16 for gable top cartons).

We don't have sufficient information to understand the reason for the apparent discrepancy for counties served between what CalRecycle published in its Report and what CCNA arrived at using CalRecycle data. We note that the "Survey_Juris_1002" file provided by CalRecycle, which appears to show the final determination of which counties and cities are served by each facility, is missing 2 facilities that CalRecycle identified as sorting cartons: Potential Industries and Green Waste. For these 2 facilities, we retrieved the Counties Served information from the file "Data Entry for Site Visits Summer 2023 (RAW Juris Inflows Residential Tab)." Moreover, the final report states on page 14 that, "Surveyed facilities serve 30 out of 58 counties statewide." But we are unsure which facilities are counted as surveyed, since the report refers to 29 surveyed facilities on page 6 versus 27 on page 9.

In any event, we ask that CalRecycle verify the assignment of counties to each facility and re-calculate the resulting percentage of all counties analyzed in the study and document this accounting in the final revised report.

Below we present the rationale for why additional facilities should be counted as sorting cartons for recycling, and we ask that counties served by these facilities also be added to the calculation.

2. Adjust CalRecycle findings to align with CCNA data documenting facilities that sort cartons to Grade PSI-52 carton bale defined streams.

CCNA's knowledge of facility sorting practices indicates that 11 California MRFs are actively sorting cartons to produce Grade PSI-52 bales. We request that CalRecycle "count" all these facilities in the SB 343 study as sorting cartons for recycling. To facilitate CalRecycle review and consideration, we summarize these in different groups as follows.

2.1 Assign additional carton sorting determinations to two facilities that CalRecycle determined sort either aseptic or gable tops for recycling, but not both.

CCNA data confirms these 2 facilities sort both types of cartons to the PSI #52 carton defined stream. As documented in Table B-1, these are:

• GreenWaste Recovery1, which CalRecycle findings indicate only sorts gable top cartons. However, CalRecycle obtained Grade PSI-52 carton samples from this facility and sorted them into significant portions of both aseptic and gable top cartons.

• Puente Hills Materials Recovery Facility, which CalRecycle findings indicate only sort aseptic cartons. In its on-site survey, this facility indicated they sort to Grade PSI-52 carton bales, consistent with CCNA data.

2.2 Add 1 additional facility that sorts to Grade PSI-52 defined stream per CCNA data, and which was included in CalRecycle's list of studied facilities. As documented in Table B-1, this is:

• Alameda County Industries Direct Transfer Facility

2.3 Add 3 additional facilities apparently not included in CalRecycle's study target list, but which CCNA data show sort cartons to the Grade PSI-52 defined stream. As documented in Table B-2, these are:

• Athens Services Sun Valley MRF and Transfer Station

• CR&R mixed recyclables facility in Stanton

• CR&R mixed waste facility in Stanton

Based on the adjustments outlined under points 1 and 2 above, we have recounted the unique counties served by the 11 facilities in California that make a Grade PSI-52 and we arrive at 18 counties served for both gable top and aseptic cartons.

3. Adjust CalRecycle findings to align with CCNA data documenting facilities that accept and sort cartons to the mixed paper (MP) defined stream.

CCNA data shows that 21 California facilities are accepting cartons with the outflow being mixed paper bales. We request that CalRecycle "count" all these facilities in the SB 343 study as sorting cartons for recycling. Again, to facilitate your review and consideration, we summarize these in different groups as presented below, followed by a rationale for why CalRecycle should count cartons sorted to the mixed paper defined stream.

3.1 Add 2 facilities that explicitly said in CalRecycle on-site surveys that they sort cartons, and that they flow into the mixed paper defined stream for recycling.

As presented in Table B-3, these are:

• Agua Mansa (Burrtec) MRF

• West Valley (Burrtec) MRF

3.2. Add 6 additional facilities that were targeted in CalRecycle surveys that CCNA data indicates sort cartons to the mixed paper defined stream.

As presented in Table B-3, these are:

• Azusa WM Inc. MRF

• Mt. Vernon/Metro Burrtec2 MRF

• Recology Sonoma Marin3 MRF

• Newby Republic MRF

• Zanker GreenWaste4

• WM Orange

3.3. Add 13 additional facilities that are not on CalRecycle's study targeted facilities list, and which CCNA data shows accept cartons for inclusion in the mixed paper defined stream.

As presented in Table B-4, these are:

• Allan Company North San Diego MRF

• Athens Services City of Industry MRF

• CWS Oakland MRF

• CWS San Jose MRF

• Burrtec East Valley Transfer and Recycling

• Gold Coast Recycling MRF

• Solid Wastes of Willits MRF

• San Mateo County (Shoreway MRF) aka South Bayside

• Sunnyvale Material Recovery & Transfer Station (SMART)

• WC Upper Valley Recycling

• Allan Company Glendale Recycling Center

• CARTS - Cedar Avenue Recycling and Transfer aka Caglia

• The BARC - Bakersfield ARC

Rationale for counting facilities not in the group of surveyed facilities used in the Preliminary Findings Report

Analyzing a limited sample of California processing facilities reduces study costs compared to analyzing all California processing facilities. However, the nature of the sorting criteria in SB 343 is not necessarily conducive to a sampling study. For example, a material such as cartons could potentially satisfy the criterion and yet, by virtue of which facilities were selected for the sampling study, the results may not reflect this. For example, by not targeting the CR&R Stanton facilities the study missed at least two other Southern California counties that are served by these facilities (we recommend counting these facilities as per recommendation 2.3 above).

CalRecycle should count all additional facilities that sort cartons and add counties they serve to the universe of counties for the purpose of calculating percentage of counties covered. This would be consistent with the methodology used elsewhere in the report.

Rationale for counting MRFs that accept cartons and produce mixed paper bales

CCNA data indicates that there are 21 MRFs in California (13 of which are not on CalRecycle's list targeted for the study) that state they accept cartons for recycling and receive materials from jurisdictions that include cartons in their curbside programs. They market mixed paper to end markets that accept cartons in the paper bales. While we don't know the specific end markets used by all CA MRFs, Appendix C provides information on end markets for mixed paper bales that contain cartons as well as end markets for Grade PSI-52 purchased from West Coast suppliers, which value the high-quality fiber contained in cartons and the reasonable yield rates obtained.

We strongly believe that CalRecycle criteria for excluding a material type and form (listed on page 9 of the Preliminary Findings Report and differently in Appendix 6) do not apply to cartons in mixed paper defined streams. Reasons for this are as follows:

• After correctly re-classifying cartons as fiber, the category matches the mixed paper defined stream category.

• Simply comparing the percentage composition of cartons in samples taken from the mixed paper defined stream at a MRF to the percentage of cartons in the residual stream at the same facility is not a valid comparison. The criterion CalRecycle lists states "the proportion [emphasis added] of the Material Type and Form in defined stream must exceed the proportion [emphasis added] of Material Type and Form in the disposed residual." In the file shared by CalRecycle with CCNA entitled "SB 343 Data Analysis Methodology – Facility" it is implied that annual commodity and residue disposal quantities were used to develop scaling factors that would provide these proportions. However, we understand that facility sales and disposal data were not available to CalRecycle, making this calculation impossible. If this is the case, this criterion is not a valid comparison.

• Even if quantities can be scaled by CalRecycle, the measurements of percent composition of cartons in the mixed paper defined stream may not have accurately captured findings regarding cartons. This is because certain material types, such as cartons, that are found in relatively low amounts in comparison to other material types, typically need to be treated differently in sampling studies than materials present in large quantities. For example, to achieve adequate accuracy and confidence in results, larger sample sizes of 200 or more pounds and more samples may need to be taken from each facility and in total. Based on a review of the raw sampling data, most mixed paper samples appeared to contain from 0-4 aseptic or gable top cartons in them (applying a weight-to-units conversion factor). Any one additional carton that could have been found in a slightly larger sample would provide significantly different percentage results.

• For any type of evaluation of the percentage or proportion of cartons in mixed paper, it is important to omit mixed paper samples from the calculation estimating the portion of cartons in mixed paper bales for the facilities that are already sorting to Grade PSI-52 carton bales. In such facilities one would expect the portion of cartons in mixed paper to be extremely low and these low or zero value percentages should not be averaged with the facilities where cartons are marketed in mixed paper.

• Material types that are generated in low quantities relative to other material types are not “rare” as they should be expected to be found in proportionally small quantities in MRF material streams. In addition, combining aseptic and gable top cartons into one material type and form category as we recommend would result in a more prevalent carton stream versus splitting cartons into two separate streams.

The bottom line is, when a MRF publicly accepts cartons from communities that include them in their recycling programs, allows cartons to flow with other fiber into the mixed paper stream, and ships mixed paper bales to end markets that accept cartons in the mix, they are sorting cartons for recycling in the same manner as is the case for other fiber types in the mixed paper stream. Consequently, the cartons they receive should be considered recyclable. Inefficiencies in MRF sorting are not an indication of lack of cartons’ recyclability – rather, this is an indication of the need/opportunity to improve the MRF sorting performance – the technology for which is readily available.

CCNA continues to work with MRFs by providing grant funding and technical support to invest in equipment and share best practices to improve MRF carton sortation, and this will expand significantly in coming years, especially through Producer Responsibility Organization Plan implementation beginning in 2027.

Explain the Data and Methodology More Clearly and Transparently in the Final Report

CCNA’s team had difficulty interpreting certain aspects of the report that pertain to evaluating carton recyclability. While the information CalRecycle provided in response to our Public Records Act request was very useful, it was difficult to understand. We ask that CalRecycle publish a more-detailed description of the methodology and data sources as well as a clear explanation of how the various data were used.

Ideally, a reader should be able to recreate the findings based on information included in the report. This will better enable stakeholders to evaluate the validity of the methodology and data used, and to offer improved data and suggestions where appropriate, as we have here.

Invite Stakeholder Data Submissions and Publish this Information Where Appropriate
Going forward, we ask that CalRecycle define a process for stakeholders to submit data and information pertinent to evaluating whether SB 343 recyclable criteria are satisfied, and that CalRecycle agree to publish such data as deemed appropriate, as authorized in statute (PRC Section 42355.51(d)(1)(B)(iii)). While reviewing, vetting, and potentially

validating such data is time consuming, the recyclable evaluations under SB 343 are too consequential to wait five years for the next study update.

CCNA Historical Investments and Proactive Initiatives in California

The Carton Council of North America is an industry organization formed in 2009, composed of four leading food and beverage aseptic and gable top carton manufacturers. Our mission has been to develop sustainable carton recycling in California and across the U.S., working with all stakeholders in the value chain. To date, we have invested more than $4 million to help strengthen California's local carton recycling programs. We fully support and share the State's goal of building stronger, more sustainable recycling systems and are invested in further growing carton recycling in California.

In conclusion, CCNA's data supports the inclusion of aseptic and gable top cartons as potentially recyclable in the final SB 343 report, as cartons meet the requirements of having at least 60% of households with access to recycling as well as being sorted for recycling by recycling facilities that collectively serve at least 60% of the state's recycling programs. In support of the work of CalRecycle, we would be happy to supply additional information on anything mentioned herein as well as respond to questions that any of you may have going forward. Please do not hesitate to contact me.

Sincerely,

Ed Klein, President, Carton Council North America

Appendix A Full Analysis of Access Rate Methodology and Findings

Appendix B Review of Data on MRFs Accepting Cartons and How Cartons are Managed

Appendix C Cartons End Market Information

Footnotes:

1 According to CCNA's information, GreenWaste only processes materials at its Charles Street campus in San Jose, where they have two facilities adjacent to one another: one single-stream MRF and one Mixed Waste Processing MRF. We have assumed that the facility CalRecycle refers to here is what Carton Council refers to as "GreenWaste Materials Recovery Campus Single Stream" located at 625 Charles St. in San Jose with SWIS number 43-AN-0019.

2 CCNA refers to this facility as "Metropolitan Recycling" located at 2601 S Mt Vernon Ave in Bakersfield.

3 CCNA refers to this facility as "Recology Sonoma Marin" located at 1309 Dynamic St in Petaluma.

4 GreenWaste only processes materials at its Charles Street campus in San Jose, where they have two facilities adjacent to one another: one single-stream MRF and one Mixed Waste Processing MRF. We have assumed that the facility CalRecycle refers to here is what CCNA refers to as "GreenWaste Materials Recovery Campus Mixed Waste" located at 575 Charles Street in San Jose.

Comment 91:
Name: Coby Skye
Date received: 3/29/2024
Source: Email (cobyskye@gmail.com)
Email includes attachments: No
Comment: To CalRecycle Staff, I appreciate CalRecycle's efforts in compiling the Preliminary Findings Report for SB 343 so quickly. It is remarkable to see the progress on Senate Bill 343 (SB 343, 2021) advancing at this pace, only a few years after the Statewide Commission on Recycling Markets and Curbside Recycling developed recommendations that led to the introduction of SB 343.

SB 343 is a game changer for recycling. It will set standards for what is considered recyclable across the country, and make it far easier for customers to purchase products made from recyclable materials and to know what bin to put materials at the end of their useful life.

The results in the Preliminary Findings Report were compelling, with most commodities falling clearly into one end of the spectrum or another in terms of both community access to curbside recycling, and whether the commodities were recovered to be made into new products.

However, a few commodities fell in a gray area and are worth paying closer attention to. For instance aluminum bottles without CRV are just below the threshold, likely owing to the lack of CRV to boost their recovery rates. However it would be very confusing to the public for some aluminum bottles to be labeled recyclable and others not to be. Given that aluminum is readily and infinitely recyclable, and has substantial environmental benefits when recycled, this commodity should unquestionably be labeled recyclable.

Similarly, aseptic containers and gable top cartons are familiar to millions of kids as their juice boxes and milk containers, and most are encouraged to recycle these items at school and home. These commodities are at risk of being excluded from the list of recyclable commodities, falling just shy of the threshold set by CalRecycle based on the preliminary data in the Report and using the methodology to account for the data sets you were able to collect.

This creates the potential for materials that are both readily recyclable and being recovered to make new products to be removed from recycling programs across the state, likely leading to a further reduction in California's recycling rate. CalRecycle should make accommodations for a margin of error in the data and set reasonable thresholds for commodities to avoid this outcome. This will separate items that are

clearly not being recovered for recycling in any meaningful way from those that have established markets.

Sincerely,
Coby Skye
Deputy Director (retired), Los Angeles County Public Works
Commissioner, Statewide Commission on Recycling Markets and Curbside Recycling

Comment 92:
Name: Jackie Nunez
Date received: 3/29/2024
Source: Email (jackie.nunez@plasticpollutioncoalition.org)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: To CalRecycle, Attached is a group letter and submission with recommendations to CalRecycle from over 100 state, national, and international NGOs urging the California State Attorney General to enforce SB343, and AB881 and stating our support of the Fact Briefing and Recommendations made in the detailed, comprehensive SB343 Fact Briefing Report (https://wiki.ban.org/images/9/9d/FactBriefingCaliforniaPlasticWaste.pdf) (published on Feb. 12, 2024, by Basel Action Network and The Last Beach Cleanup).
Summary Finding: All California consumer plastic waste bales fail under SB343 to meet Basel Convention requirements to be "recyclable." Therefore, no type of consumer plastic material type or form may be labeled as recyclable in California.[4]

Recommendations to CalRecycle to Correct the SB343 Material Characterization Study:
1. Acknowledge that none of the eight categories of plastic waste are “consistent with the Basel Convention” as required by California law, and therefore no type of consumer plastic material and form meets the “recyclable” requirements of CA SB343.[4] 5. 6. 7.

2. Separate polyethylene terephthalate 9. (PET) thermoforms into a unique category of material type and form since they cannot be recycled with PET bottles.

3. Correct errors in the number of facilities claiming to sort polypropylene (PP) bales to be consistent with CalRecycle’s legally mandated Recycling and Disposal Reporting System (RDRS) data which shows an insufficient 15% sorting rate.

4. Include a detailed assessment of the sales of sorted plastic waste bales.

Please reply with confirmation of receiving this submission. Thank you for your work and immediate attention, Jackie
-
Jackie Nuñez | Founder, The Last Plastic Straw
Advocacy & Engagement Manager o +1.323.936.3010 x707 | skype: jackie_4879

Attachment Text: March 29, 2024

(Copy sent Via U.S. Mail and electronic submission to CalRecycle)

Secretary Yana Garcia
California Secretary for Environmental Protection
1001 “I” Street, P.O. Box 2815, Sacramento, CA 95812

Attorney General Rob Bonta Attorney General's Office California Department of Justice
Attn: Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550

Subject: Truthful Implementation and Enforcement of California Plastics Laws

Dear Secretary Garcia and Attorney General Bonta,

We, the undersigned, urge you to truthfully implement and enforce California’s plastics laws. Plastic waste and pollution are harming global ecosystems and the California economy. Truthful implementation and enforcement of plastics laws will benefit Californians and reduce human health, environmental, and economic damage around the world.

In 2021, California passed two laws related to plastics that were intended to protect California consumers from false recyclability labels (SB343)[1] and foreign countries from receiving contaminated plastic waste bales from California (AB881).[2]

While SB343 was intended to be a “Truth-in-Labeling” law, the Material Characterization Study Preliminary Findings Report (SB343 Report) published by CalRecycle on December 28, 2023, ignores key legal requirements and presents incomplete and inaccurate data. Plastic producers may try to use the false findings to turn SB343 into a “Lies-in-Labeling” law.

Regarding AB881, CalRecycle’s material characterization data proved that no category of plastic waste bale can be legally claimed for “diversion” credits due to high contamination rates. Yet CalRecycle reports high statewide waste diversion rates of 40% based on the export of plastic waste, including to Mexico.[3] We urge the California State Attorney General (AG) to investigate illegal diversion reporting under AB881 by municipalities, material recovery facilities, and other plastic waste exporters.

We support the Fact Brief and Recommendations made in the detailed, comprehensive assessment performed by Basel Action Network and The Last Beach Cleanup, published on February 12, 2024. Highlights below:

Summary Finding: All California consumer plastic waste bales fail under SB343 to meet Basel Convention requirements to be "recyclable." Therefore, no type of consumer plastic material type or form may be labeled as recyclable in California.[4]

Recommendations to CalRecycle to Correct the SB343 Material Characterization Study:

1. Acknowledge that none of the eight categories of plastic waste are “consistent with the Basel Convention” as required by California law, and therefore no type of consumer plastic material and form meets the “recyclable” requirements of CA SB343.[4]

2. Separate polyethylene terephthalate (PET) thermoforms into a unique category of material type and form since they cannot be recycled with PET bottles.

3. Correct errors in the number of facilities claiming to sort polypropylene (PP) bales to be consistent with CalRecycle’s legally mandated Recycling and Disposal Reporting System (RDRS) data which shows an insufficient 15% sorting rate.

4. Include a detailed assessment of the sales of sorted plastic waste bales.

Footnotes:

[1] California Code, Public Resources Code - PRC § 42355.51

[2] California Code, Public Resources Code § 41781.4

[3] CalRecycle, “State of Disposal and Recycling in California, Calendar Year 2021”

[4] SB343 exempts California Deposit Beverage Bottles from the requirements of the

Truth-in-Labeling Law

Thank you for your immediate attention.

Dianna Cohen, CEO & Co-Founder
Plastic Pollution Coalition
Los Angeles, California

Jan Dell, Independent Engineer
The Last Beach Cleanup
Dana Point, California

Jim Puckett
Basel Action Network
Seattle, Washington

Jackie Nuñez, Founder
The Last Plastic Straw
Santa Cruz, California

Larisa de Orbe, President
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Ciudad de México, México

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Claudia Romero, Comunicaciones
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Ciudad de México, México

Gustavo Castro Soto, Coordinador General
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Dr. Kakha Nadiradze, President
Association for Farmers Rights Defense, AFRD
Tbilisi, Georgia

Mange Ram Adhana,
President Association For Promotion Sustainable Development
Hansi, India

Osaias Soares, President
Association of Tourism Koleku Mahanak Atauro (ATKOMA)
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Emily Jeffers, Senior Attorney
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Lisa DePaoli, Communications Director
Center for Coalfield Justice
Washington, PA

Diane Waddell
Center for Justice, Outreach & Yoga
Saint Joseph, MO

Dr Vineeta Hoon
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Imus City, Philippines

Artis Burney, Director
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Aydé Bravo Berrios, Member
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Nonthaburi, Thailand

Lauren Weir, Senior Campaigner
Environmental Investigation Agency (EIA)
London, England

Alison Colclough, Programme Director
Everyday Plastic
Margate, England

Yvette Arellano, Founder & Director
Fenceline Watch
Houston, TX

Maureen McCarthy, Founder
FoCo Trash Mob
Fort Collins, CO

Shannon Smith, Executive Director
FracTracker Alliance
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Bisimwa Makelele Kauchu, Directeur des programmes et des Opérations
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Bukavu, DRC
Marisa Jacott, Directora

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Ciudad de México ,México

Marcel Howard, Zero Waste Program Manager -US/CAN
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Antoinette Vermilye, Co-Founder

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Geneva, Switzerland

Sarai Sosa, Constituent
Green Behind the Scenes
Los Angeles, CA

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Greenpeace USA
Washington, DC

Mohammed Javed Qureshi, Chairman

Hamraah Foundation
Delhi, India

Olga Speranskaya, Co-Director
Health & Environment Justice Support (HEJSupport)
Ottawa, Canada

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Lauren Moreira, Founder CEO
MORE CLAY LESS PLASTIC
Frisanco, Italy

Tamela Trussell, Founder
Move Past Plastic (MPP)
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Muuse

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Kolkata, India

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Nevada County Climate Action Now/WasteNOT
Grass Valley, CA

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Nexus3 Foundation
Denpasar, Indonesia

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Orange Coast College
Costa Mesa, CA

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Real Food Systems Youth Network
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Kristine Kubat, Executive Director
Recycle Hawaii
Hilo, Hawaii

Lisa Boyle, Environmental Attorney
Resilient Palisades
Pacific Palisades, CA

Ana G. Dewar, Governmental Affairs & Policy Director
Retorna
Barcelona, Spain

Dr. Zoe Bray
ReusableReno
Reno, NV

Mageswari Sangaralingam, Honorary Secretary
Sahabat Alam Malaysia (Friends of the Earth)
Georgetown, Malaysia

Pauline Seales, Organizer
Santa Cruz Climate Action Network
Santa Cruz, CA

Erica Donnelly-Greenan, Executive Director
Save Our Shores
Santa Cruz, CA

Laura Anthony, Program Coordinator
Save the Albatross Coalition
San Diego, CA

Maimoona Block, Executive Director
Sea Hugger
Half Moon Bay, CA

Paulita Bennett-Martin, Acting Director of Programs
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Brad Nahill, President
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Stephanie Blumenthal, Head
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San Antonio, TX

Sam Pearse, Campaigns Director
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Susie Crick, President
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Kevin Greene, Zero Waste Chair
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Tucson, AZ

Alison Waliszewski
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Santa Monica

Christopher Chin, Executive Director
The Center for Oceanic Awareness, Research, & Education (COARE)
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The Science Exchange
San Diego, CA

Jane Bremmer, Chair
Toxics Free Australia
Perth, Western Australia

Hazel Oakley, Managing Director
TRACC - Tropical Research & Conservation Centre
Semporna, Malaysia

Joanie Steinhaus, Ocean Program Director
Turtle Island Restoration Network
Galveston, TX

Abdul-Mumin Yussif, Executive Director
United Force for Development International
Tamale, Ghana

Jed Pauker, Leader

Venice Resistance
Venice, CA

Benedict Wermter, Director
Veritas Edukasi Lingkunga
Surabaya, Indonesia

Kungne Kounche Jacques Edmond, CEO & Founder
World Wetlands & Oceans Protection Rescue Association (W2OPRA)
uDoala, Cameroon

Keith Roman, CEO
Zero Waste Association of South Africa ("ZWASA")
Cape Town, South Africa

April 2024

Comment 93:
Name: Carol Patterson
Date received: 4/1/2024
Source: Email (cpatterson@fpi.org)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Thank you for the opportunity to provide the attached input concerning CalRecycle's SB 343 Material Characterization Study Preliminary Findings (SB 343 MCS). We appreciate your consideration of FPI's feedback and would be pleased to discuss these comments and recommendations with you further.
Sincerely,
Carol
Carol Patterson
Vice President, Government Relations
Foodservice Packaging Institute
tel (571) 424-3478
web www.fpi.org

Attachment Text: April 1, 2024

Via electronic submission: wastechar@calrecycle.ca.gov

RE: SB 343 Material Characterization Study Preliminary Findings

Thank you for the opportunity to provide the following input concerning CalRecycle's SB 343 Material Characterization Study Preliminary Findings (SB 343 MCS), as posted December 28, 2023.

Founded in 1933, the Foodservice Packaging Institute (FPI) is the leading authority on foodservice packaging in North America. FPI supports the responsible use of all foodservice packaging, while advocating an open and fair marketplace for all materials.

Our core members include raw material and machinery suppliers and packaging manufacturers, which represent about 90 percent of the industry. Additionally, several distributors and purchasers of foodservice packaging are part of FPI's affiliate membership.

The foodservice packaging industry is committed to reducing the impact of its products on the environment and is dedicated to increasing their recovery. FPI has several special interest groups that bring together the supply chain to develop and promote economically viable and sustainable recovery solutions for foodservice packaging. These special interest groups include the Paper Recovery Alliance, Plastic Recovery Group, Paper Cup Alliance and Foam Recycling Coalition. More information on these groups and their efforts can be found here.

FPI acknowledges the considerable effort undertaken by CalRecycle in executing the SB 343 MCS. We also must emphasize the critical importance of data accuracy given the wide-ranging implications the study findings will have for products and businesses in the California marketplace.

Overall, we believe that additional efforts are required to enhance the accuracy of the information, as outlined in our comments and recommendations below.

Jurisdiction Acceptance

Quality Control and Level of Review

Through our special interest group recovery work, it is our experience that accuracy is critical when reviewing and evaluating recycling guidance to determine if materials are accepted. When collecting data on a large number of materials and communities, it is common for certain items to be overlooked or mischaracterized. This can be particularly true for less commonly accepted materials where extensive manual review of all initial data is required for accuracy.

The cited jurisdiction methodology describes several valuable automated quality control steps. However, we are concerned that there is no mention of a secondary manual review of the data to ensure precision. While an automated process could catch and correctly categorize certain exclusions, it would not necessarily be able to correct a case in which a guideline image was simply overlooked.

An example of this scenario is shown below for the City of Oxnard. The city's Recycle Oxnard Search Tool shows that residents should recycle plastic cups. However, in the Jurisdiction Acceptance spreadsheet, the plastic cups column is left blank, indicating acceptance was not found.

Additionally, the following screenshot shows materials that are listed as accepted on Berkeley's residential webpage (https://berkeleyca.gov/city-services/trash-recycling/residential-waste-services), but were not captured as accepted materials in the desktop research process. Note, the yellow fill indicates a missing 'Y', and the red fill denotes a missing 'N'.

We further note that, when reviewing the R script, it appears that exclusion depends on the presence of any, rather than all, of a material. The script indicates that there was an initial attempt to reject the entire material type and form (MT&F) only if ALL items within it were rejected. However, this approach was abandoned in favor of the any logic.

Recommendations: FPI recommends that CalRecycle undertake an extensive manual review of the data that was collected using automation. This is critical to increasing the accuracy and reliability of the data.

We also propose that CalRecycle provide further clarification on why the rejection of any specific materials triggers the larger MT&F rejection, as well as how the model is capable of capturing more complex scenarios beyond the provided example of "All plastics are accepted, except utensils."

Program Groups and Level of Detail

We note that CalRecycle researched individual cities' recycling programs and then evaluated all unincorporated communities in each county as a single group, denoted as "Balance of County". However, it is important to recognize that in some counties in California, unincorporated areas can be franchised to haulers with different guidelines. Some areas are also open market, meaning residents can subscribe to services from haulers with different guidelines. Therefore, assigning all residents in unincorporated areas to a single program with a single set of guidelines is an oversimplification that results in some material acceptance being overlooked. Appendix 1 provides examples for Riverside and Contra Costa County.

Recommendation: We propose that CalRecycle revisit its methodology for evaluating recycling programs in unincorporated areas, particularly in counties where different guidelines may apply due to franchising arrangements or open-market systems. By recognizing and accounting for variations in guidelines and service providers, CalRecycle can ensure a more comprehensive assessment that accurately reflects material acceptance rates.

Material Categorization

CalRecycle evaluated 84 categories of materials in its jurisdiction acceptance data, and also used several additional text fields to capture specific material exclusions. It is currently unclear how the determination of acceptance of these materials was made. While the conclusions may have been drawn indirectly from other language and categories, as noted above under Quality Control and Level of Review, this may also undercount acceptance of items featured in images rather than text.

Notably, paper cups and the other items listed as jurisdiction language for category F10 (as shown below) are not specifically listed as a material that was evaluated in the data collection sheet. To draw accurate conclusions about the acceptance of paper cups and other paper food containers that may fall within this broad category, it would be necessary to have specific categories for each item in the jurisdiction acceptance data.

Additionally, there are several materials that are captured in more than one category (MT&F Code). For instance, in F01 “Uncoated Corrugated Cardboard/ Old Corrugated Containers (OCC)” examples provided indicated this MT&F “may include clean molded fiber.” However, “Clean Molded Paper Fiber” is classified

under its own MT&F (F08). Moreover, F09 “Uncoated Fiber-Based Food Service Ware” includes “pulp paper egg cartons” which may also be considered molded fiber.

The impact of this approach and categorization is evident in the resulting data (percentages). In Table 1,F01 is noted as having 96 percent population access, F08 indicates 47 percent access and F09 is listed at 44 percent.

Recommendation: To improve data accuracy, we believe that it is necessary to have specific categories for each item in the jurisdiction acceptance data, as the aggregation of data appears to have put some of the findings in question.

Material Recycling Facility (MRF) Sortation

Population Represented by the SB 343 MCS

The SB 343 MCS presents findings from material characterization studies conducted at 10 facilities throughout the state. The facilities chosen were not concentrated in the most populous regions. By our estimates, 20 percent of the facilities studied represent areas with 56 percent of the population, 60 percent represent facilities in areas that represent 38 percent of the population, and the final 20 percent of facilities represent 6 percent of the population.

In our view, this disproportionate representation puts the findings of the study in question as the resulting information may not represent the actual statewide reality.

Recommendation: FPI recommends completing further studies to improve data accuracy. To achieve this, it is imperative that the facility selection process ensures a more equitable representation of population densities, thus enabling a thorough review of statewide recycling practices. This may include increasing the number of facilities in the Los Angeles/San Diego Basin region to approximately nine in order to represent the same ratio to population as in other regions.

Population Represented by Phone and On-Site Surveys

According to the SB 343 MCS, 30 facilities were surveyed via phone or in-person visits. The report presents the results as: “Surveyed facilities serve 30 out of 58 counties statewide, and the populations of those counties make up 88.53% of the statewide population.” However, the actual MRFs surveyed do not process material from 88.53 percent of California’s population; rather, they may only receive a fraction of their material from counties whose population totals this percentage. Moreover, these counties supply material to other MRFs not included in the surveys.

We estimate that in total the surveyed MRFs process less than 20 percent of the state's residential recycled material. The current presentation of the MRF survey in terms of population estimates in the SB 343 MCS may lead readers to conclude that the survey was far more representative of statewide MRF capacity than it was.

Recommendations: First, we recommend that the SB 343 MCS preliminary findings accurately reflect the population served by the facilities that were initially surveyed. Alternatively, this could be done by restating the number in terms of the percentage of statewide MRF capacity that was represented by the surveys.

Next, similar to our previous recommendations, we proposed that additional surveys are needed to more closely align with the stated 88.53 percent of the population, or at least 50 percent, to increase statewide representation.

Robustness of Sampling Methodology in Material Characterization Study

The material characterization study utilized a total of 196 hand sorted samples and 70 visually characterized samples. While the number of samples is deemed adequate for the state overall according to ASTM D5231-92, it does pose potential challenges in terms of increased error ranges for specific MRFs or sub-state geographic areas such as counties or the regions outlined in CalRecycle's report.

It should also be noted that the number of samples for any one commodity is significantly lower (as an example, there were fewer than 20 samples of mixed paper); this also increases the error range when using the information to make determinations about the prevalence of the Material Type & Form categories within those commodities.

Recommendation: To address the issue of limited sample sizes in the material characterization study, it is recommended that several steps be taken to improve the accuracy and reliability of the findings. Firstly, a thorough assessment should be conducted to determine the optimal sample size needed for specific MRFs or sub-state geographic areas, such as counties or regions. This assessment should consider factors like the confidence interval, acceptable precision levels, and the intended scope of analysis (e.g., MRFs, regions, commodities).

Secondly, to mitigate the impact of small sample sizes for certain commodities, additional samples should be collected to ensure adequate representation of each material type. This may involve allocating more resources to sample those commodities with fewer samples, such as mixed paper, to reduce error ranges and improve the accuracy of prevalence determinations within Material Type & Form categories.

Possible Seasonal Effects on Sampling

All MRF sorting tests were performed in August 2023. While this timing may have a smaller impact than the issues raised above, it should be noted that consumers purchase different items at different times of year. Although California is one of the more temperate climates in the world, it does have considerable seasonal temperature differences. During the summer, the Central Valley and areas inland from the coast in

Southern California can experience temperatures between 80 and 115°F, while also experiencing 40 to 70°F during the winter. Northern California and the Sierras can experience freezing conditions during the winter. There are a few packaging types that may be impacted by seasonal differences during the hot months in California versus the colder months such as fewer hot cups and more cold beverage packaging.

Recommendation: We recommend that MRF sorting should be performed at various times throughout the year, in different geographic regions to address seasonal and regional differences.

Alignment with Recyclability Status of Covered Material Categories, SB 54 Report to Legislature (SB 54 Report)

The terminology used to define and assess MT&Fs in the SB 343 MCS and the Covered Material Categories (CMCs) described in the SB 54 Report differ, making it difficult to comprehend how these two approaches correspond.

For example, in the SB 343 MCS, "Clean Molded Paper Fiber" (MT&F F08) did not meet the acceptance threshold required to be considered potentially recyclable. Conversely, the SB 54 Report lists CMC PF3N, "Molded Fiber - All Forms of Packaging w/o plastic component", as potentially recyclable. This inconsistency might stem from the previously mentioned issue of molded fiber being categorized in multiple overlapping categories in the SB 343 MCS.

Another instance of discrepancy between the two reports pertains to polycoated food service ware. The SB 343 MCS only mentions "polycoated" paperboard concerning gable-top cartons and aseptic containers, whereas the SB 54 report presents data on a specific category labeled as "Multi-Material Laminate - Polycoated food service ware."

These two examples illustrate the type of inconsistency that currently needs to be addressed.

Recommendation: FPI recommends that CalRecycle provide a comprehensive mapping of how the MT&Fs from the SB 343 MCS correspond to the proposed SB 54 CMCs and the data presented in the SB 54 Report. This mapping should include details regarding the transfer of data between the two frameworks.

Thank you for your consideration of FPI’s feedback. We would be pleased to discuss these comments and recommendations with you further.

Sincerely,
Carol Patterson, Vice President, Government Relations
cpatterson@fpi.org

Comment 94:
Name: Veronica Pardo
Date received: 4/1/2024
Source: Email (mailto:veronica@resourcecoalition.org)

Email includes attachments: No
Comment: Dear CalRecycle, I am writing to you on behalf of the Resource Recovery Coalition of California, a trade association of haulers, recyclers and composters managing solid waste in California.

We appreciate the opportunity to comment on the draft SB 343 Preliminary Findings Report. We are still trying to understand the implications of the report on the CMC list for SB 54 as the regulations develop.

Our greatest concern at this time is that tin/steel/bimetal has been deemed non-recyclable. Steel food cans, for example, have been diverted for decades. These cans extend the shelf life of edible products and are important packaging for food security.

As you may know, Senator Allen is promoting SB 1231 that would authorize producers to petition CalRecycle to identify additional materials to be considered recyclable. We believe the problem materials are primarily plastic and would like to work toward tin/steel/bimetal to be included as recyclable materials.

Please reach out if you have any questions.

Thank you,
Veronica Pardo, Regulatory Affairs Director
Resource Recovery Coalition of California
PO Box 191840
Sacramento, CA 95819
T (916) 444-2772
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www.resourcecoalition.org

Comment 95:
Name: Eric Sherman
Date received: 4/1/2024
Source Email (erics@pginkjets.com)
Email includes attachments: No
Comment: It's disconcerting that the SB 343 Preliminary Findings fails to identify printer cartridges as a significant component of recycling efforts in California. Printer Cartridges are PET containers for ink or toner that often carry recycling logos as the original equipment manufacturer (OEM) of printers have a take back program either through the mail or partnering retailers that recycles the used cartridges from their printers. Cartridges not collected by the OEMs are often collected by E-waste companies and sold to printer cartridge remanufacturers.

In the 1980s the, the U.S. Printer Cartridge Remanufacturing Industry was established to diverted millions of printer cartridges away from landfills and remanufactured into a new low-cost reusable product. The San Fernando Valley was the booming epicenter of this once multi-billion-dollar circular economy. Now the industry sits on the brink of

extinction as the import of nonrecyclable new-built clone cartridges flood the U.S. marketplace undercutting remanufactured products to the point many cartridges are no longer being remanufactured.

These new-built clone cartridges are not recyclable as there are no standards for how they are manufactured, as well as some may violate OEM intellectual property. Clone cartridges imported from overseas often misleadingly label themselves with the chasing arrow recycling logo. Below is an example of a new-built clone cartridge with deceptive recycling marks that was purchased online from Amazon.

Planet Green has been remanufacturing ink cartridges for over 24 years. We have one of the largest printer cartridge collection programs in the country. We receive millions of cartridges a year, and a large percentage of them are these non-recyclable new-built cartridges that are not remanufactured OEM cartridges but single-use clones. They make false claims of being a recycled product and use the recycling symbol with other icons and language to mislead consumers about their recycling benefits. Printer cartridges are a consumable item, and most households and businesses own a printer. Unfortunately, it's estimated over 375 million cartridges end up in U.S. landfills each year. The problem has been exacerbated by the inflow of aftermarket clone single-use cartridges.

The manufacturers and sellers of these non-recyclable clone cartridges saturate the market with millions of new units, unburdened by any responsibility of collecting, handling, recycling, or disposal of their products. There is no "truth in labeling" for these products. Manufacturers, sellers, and online marketplaces of print consumable products must be held accountable when using or permitting the deceptive labeling on nonrecyclable new-built printer cartridges.

We invite CalRecycle representatives to see firsthand the problem with printer cartridge waste and the deceptive practice of labeling nonrecyclable printer cartridges with the chasing arrow logo.

Thank you,
Eric Sherman

Eric Sherman
Director of Recycling
Planet Green Cartridges Inc.
20724 Lassen St, Chatsworth, CA 91311
P (800) 377-1093 ext. 204
erics@pginkjets.com | www.pginkjets.com

Comment 96:
Name: Jordan Fengel
Date received: 4/1/2024
Source: Email (Jordan.Fengel@cartoncouncil.org)

Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Dear CalRecycle SB 343 Study Team, I am resending our submission on behalf of the Carton Council of North America (CCNA) as we initially left out an important supporting document. Attached are our comments pertaining to the SB 343 preliminary findings report, as well as a supporting document for Appendix A (see the Excel sheet titled, “SB 343 Jurisdiction Data – RRS comparison for App A 3-21-24) that provides source information for RRS’ conclusions about access in selected communities where upon our research, access information was confusing. We look forward to our continued engagement with the CalRecycle 343 Study Team and thank you in advance for your feedback.
Best regards,
Jordan
Jordan Fengel
Director of Government Affairs
Carton Council of North America
Phone: +1 940-380-4668 | Mobile +1 940-220-0585
www.recyclecartons.com

Attachment text: March 28, 2024

Dear CalRecycle SB 343 Study Team,

We sincerely thank CalRecycle staff for producing this complex first-of-its-kind study, for responding to our data request, and for meeting with us to discuss the methodology details and our concerns. The report's findings on aseptic and gable top food and beverage carton recyclability are crucially important to the Carton Council of North America (CCNA) and our customers.

We are very concerned that cartons may be erroneously classified as not recyclable. As we discussed, based on CCNA knowledge and data pertaining to California recycling programs, we expected that the CalRecycle SB 343 study would show cartons satisfy both the jurisdiction collection access and facility sorting criteria defining recyclable materials. We believe if local jurisdiction curbside collection programs and MRFs stop accepting cartons for recycling due to their being categorized as not recyclable, the result will be a significant step backwards for recycling in California. It will create barriers to existing carton recycling efforts and impede further expansion of carton recycling in California. This would be counter to CalRecycle’s goals, and confusing and disappointing to the public. Further, it would result in substantial negative impacts on the many companies doing business in California who manufacture cartons or use cartons for packaging their food and beverage products.

Following is our feedback and suggestions for revising the SB 343 Preliminary Findings Report with respect to aseptic and gable top cartons. We also provide some brief broad comments intended to strengthen future SB 343 reports and related activities.

Need to Adjust Cartons' Categorization to Align with Jurisdiction Recycling Program Communications, Sorting Practices, and Recycler Industrial Classifications

During our joint meeting, CalRecycle staff mentioned plans to reclassify cartons under the fiber category in the revised SB 343 report. We strongly support this reclassification. This is consistent with how cartons are viewed by recycling industry markets, and also consistent with the classification of cartons under SB 54's Covered Material Categories.

Also as discussed, we recommend that the "X02, Gable-top Cartons - non-CRV" and "X-03, Aseptic Containers - non-CRV" material types and forms be combined into a single "Aseptic and Gable-top Cartons" material type and form.

(Category "X01, Gable-top Cartons/ Aseptics – CRV" already combines the two types of cartons covered under the deposit system into a single carton category.) This is important because:

• Post-consumer gable top and aseptic cartons are collected, processed, and marketed as a single commodity by nearly all community recycling programs and MRFs in the

U.S. that accept cartons. Collecting both types of cartons together increases material capture and improves economies of scale – a major reason why CCNA has always promoted collection and recycling of both types of cartons as a single material type and form.

• Gable top and aseptic cartons, combined, are recognized as a single commodity grade by the Paper Stock Industries chapter of the Institute of Scrap Recycling Industries (Grade PSI-52). Carton markets producing roofing and/or wallboard also accept bales of aseptic and gable top containers.

• CCNA has conducted research in the past that indicates consumers often have a difficult time differentiating between aseptic and gable top cartons and view them as one container type.

• Lastly, combining the two carton types into one material category enables easier data gathering and determinations of recyclability and recycling effectiveness. Using two different categories can cause challenges in tracking and reporting, and measuring recycling tonnages and rates, since it splits the already relatively low- volume commodity into two even lower-volume commodities.

CCNA Data Supports Revising Estimated Carton Access Rates

It is well known that local recycling program guidance information can sometimes be vague and inconclusive. Consequently, it is understandable that some errors may be made, especially when comprehensively reviewing guidance pertaining to all 89 material types and over 500 California jurisdictions. CCNA's consultant, Resource Recycling Systems (RRS), has spent multiple years tracking access to carton recycling in California by obtaining documentation of cartons' inclusion in community curbside and drop-off recycling programs via examination of community websites and program

public education materials. This information is maintained by RRS on behalf of the Carton Council in a database along with data from other states, which is updated monthly to account for changes in local recycling programs.

RRS was asked to perform a comparison of Carton Council recycling program data with CalRecycle data, focusing on identifying differences in the characterization of carton acceptance in each jurisdiction. The full analysis methodology and findings are provided in Appendix A. Also, provided separately is a spreadsheet containing URLs for all communities deemed by RRS to have carton recycling access beyond those identified by CalRecycle, plus screen shots of specific website content for selected jurisdictions.

In brief, RRS identified communities determined by RRS to accept aseptic and/or gable top cartons for recycling but not identified as such in data used to compile CalRecycle's preliminary report that was provided to CCNA. These jurisdictions were grouped into five categories:

Group 1: 27 large communities (having populations over 75,000) found by RRS to accept cartons

Group 2: 25 smaller communities found by RRS to accept cartons

Group 3: 6 unincorporated areas (balance of county) where RRS determined that the majority of residents have access to carton recycling

Group 4: 8 communities serviced by haulers and MRFs known to accept cartons but with community website information that says otherwise or doesn't mention cartons

Group 5: 10 communities found to accept cartons by CalRecycle but not found to accept cartons by RRS

Using the same California Department of Finance population data used by CalRecycle, RRS determined the population served by these jurisdictions. The population associated with Group 5 communities was then subtracted from CalRecycle's initial totals and the populations associated with Groups 1 - 4 were added and new access rates calculated.

Table 1 summarizes these findings.

Based on our comparative analysis calculations, making these changes would increase the CalRecycle estimated access rate (based on percent of CA population) for aseptic cartons to 69% and to 72% for gable top cartons – both of which exceed the threshold of 60% access required by SB 343. Note, too, that we still do not understand why and how CalRecycle adjusted the SB 343 carton access rates downward for purposes of the SB 54 Report to the Legislature and recyclable list. The carton-related findings under the SB 343 categorization system should be exactly the same as those under the SB 54 categorization system. We would appreciate the opportunity to further discuss this with CalRecycle staff.

CCNA Data Supports Revising Determinations on Which Facilities Sort Cartons for Recycling

Similar to carton access rates, CCNA's team has carefully reviewed and worked to update and validate its data on MRFs accepting cartons and how cartons are handled within each MRF. This work has entailed multiple MRF site visits and interviews. We then compared CCNA data with CalRecycle data on whether and how different facilities sort cartons for recycling. We summarize the pertinent data in Appendix B, under four separate tables:

Table B-1: Facilities Making Grade PSI-52 that Were Targeted in CalRecycle Surveys (identifies 3 facilities where CCNA and CalRecycle information differ)

Table B-2: Facilities Making Grade PSI-52 NOT Targeted in CalRecycle Surveys (identifies another 3 facilities that make a grade PSI-52 but that CalRecycle did not target in its surveys)

Table B-3: Facilities that Sort Cartons with Mixed Paper Targeted in CalRecycle Surveys (identifies 8 facilities targeted by CalRecycle surveys that sort cartons with mixed paper)

Table B-4: Facilities that Sort Cartons with Mixed Paper NOT Targeted in CalRecycle Surveys (identifies 13 facilities that sort cartons with mixed paper but were not targeted by CalRecycle surveys)

Table B-1 shows our understanding of how each facility was "counted" in the CalRecycle Preliminary Findings (based on data in the "Survey_Outflows_091823_clean_ rev0927" file provided to us in response to our public records request).

Table B-3 includes information pertaining to hand sort data from the CalRecycle Preliminary Findings (based on the file "SB3434 MCS Hand Sort Data 2023 S01").

All tables include the counties served by each facility. For Tables B-1 and B-3, the information is taken from the CalRecycle files "Survey_Juris_1002" and "Data Entry for Site Visits Summer 2023 (RAW Juris Inflows Residential Tab)." For Tables B-2 and B-4, the information is from CCNA. Lastly, for all tables, CCNA supporting evidence is provided.

Following are adjustments that we believe CalRecycle should consider, which would increase the counties served to 18 from the 8 currently reflected in the Preliminary Findings Report.

1. Re-calculate and verify county served percentages (as a surrogate for "programs served") based on current CalRecycle data.

CalRecycle data provided to us shows that 7 facilities were found to sort both aseptic and gable top cartons to Grade PSI-52, 1 additional facility was found to sort gable top

cartons, and 1 additional facility to sort aseptic cartons. Based on review of counties served by each facility as provided by CalRecycle, we count 10 unique counties for aseptic cartons and 16 unique counties for gable top cartons served by these facilities. These counts are in comparison to the Preliminary Findings Report, which in Table 2 (p.15) shows 8 counties for both aseptic and gable top cartons.

Table B-1 shows only 5 facilities that CalRecycle found to sort both aseptic and gable top cartons to Grade PSI-52 because CCNA data indicates that 2 of the CalRecycle identified facilities do not in fact make this grade. The WM Orange facility sorts cartons with mixed paper while the Rainbow facility does not accept cartons. The removal of these 2 facilities does not, however, impact the unique County count that we arrive at (10 for aseptic cartons and 16 for gable top cartons).

We don't have sufficient information to understand the reason for the apparent discrepancy for counties served between what CalRecycle published in its Report and what CCNA arrived at using CalRecycle data. We note that the "Survey_Juris_1002" file provided by CalRecycle, which appears to show the final determination of which counties and cities are served by each facility, is missing 2 facilities that CalRecycle identified as sorting cartons: Potential Industries and Green Waste. For these 2 facilities, we retrieved the Counties Served information from the file "Data Entry for Site Visits Summer 2023 (RAW Juris Inflows Residential Tab)." Moreover, the final report states on page 14 that, "Surveyed facilities serve 30 out of 58 counties statewide." But we are unsure which facilities are counted as surveyed, since the report refers to 29 surveyed facilities on page 6 versus 27 on page 9.

In any event, we ask that CalRecycle verify the assignment of counties to each facility and re-calculate the resulting percentage of all counties analyzed in the study and document this accounting in the final revised report.

Below we present the rationale for why additional facilities should be counted as sorting cartons for recycling, and we ask that counties served by these facilities also be added to the calculation.

2. Adjust CalRecycle findings to align with CCNA data documenting facilities that sort cartons to Grade PSI-52 carton bale defined streams.

CCNA's knowledge of facility sorting practices indicates that 11 California MRFs are actively sorting cartons to produce Grade PSI-52 bales. We request that CalRecycle "count" all these facilities in the SB 343 study as sorting cartons for recycling. To facilitate CalRecycle review and consideration, we summarize these in different groups as follows.

2.1 Assign additional carton sorting determinations to two facilities that CalRecycle determined sort either aseptic or gable tops for recycling, but not both. CCNA data confirms these 2 facilities sort both types of cartons to the PSI #52 carton defined stream. As documented in Table B-1, these are:

• GreenWaste Recovery[1], which CalRecycle findings indicate only sorts gable top cartons. However, CalRecycle obtained Grade PSI-52 carton samples from this facility and sorted them into significant portions of both aseptic and gable top cartons.

• Puente Hills Materials Recovery Facility, which CalRecycle findings indicate only sort aseptic cartons. In its on-site survey, this facility indicated they sort to Grade PSI-52 carton bales, consistent with CCNA data.

2.2 Add 1 additional facility that sorts to Grade PSI-52 defined stream per CCNA data, and which was included in CalRecycle's list of studied facilities. As documented in Table B-1, this is:

• Alameda County Industries Direct Transfer Facility

2.3 Add 3 additional facilities apparently not included in CalRecycle's study target list, but which CCNA data show sort cartons to the Grade PSI-52 defined stream. As documented in Table B-2, these are:

• Athens Services Sun Valley MRF and Transfer Station

• CR&R mixed recyclables facility in Stanton

• CR&R mixed waste facility in Stanton

Based on the adjustments outlined under points 1 and 2 above, we have recounted the unique counties served by the 11 facilities in California that make a Grade PSI-52 and we arrive at 18 counties served for both gable top and aseptic cartons.

3. Adjust CalRecycle findings to align with CCNA data documenting facilities that accept and sort cartons to the mixed paper (MP) defined stream.

CCNA data shows that 21 California facilities are accepting cartons with the outflow being mixed paper bales. We request that CalRecycle "count" all these facilities in the SB 343 study as sorting cartons for recycling. Again, to facilitate your review and consideration, we summarize these in different groups as presented below, followed by a rationale for why CalRecycle should count cartons sorted to the mixed paper defined stream.

3.1 Add 2 facilities that explicitly said in CalRecycle on-site surveys that they sort cartons, and that they flow into the mixed paper defined stream for recycling.

As presented in Table B-3, these are:

• Agua Mansa (Burrtec) MRF

• West Valley (Burrtec) MRF

3.2. Add 6 additional facilities that were targeted in CalRecycle surveys that CCNA data indicates sort cartons to the mixed paper defined stream.

As presented in Table B-3, these are:

• Azusa WM Inc. MRF

• Mt. Vernon/Metro Burrtec2 MRF

• Recology Sonoma Marin3 MRF

• Newby Republic MRF

• Zanker GreenWaste4

• WM Orange

3.3. Add 13 additional facilities that are not on CalRecycle's study targeted facilities list, and which CCNA data shows accept cartons for inclusion in the mixed paper defined stream.

As presented in Table B-4, these are:

• Allan Company North San Diego MRF

• Athens Services City of Industry MRF

• CWS Oakland MRF

• CWS San Jose MRF

• Burrtec East Valley Transfer and Recycling

• Gold Coast Recycling MRF

• Solid Wastes of Willits MRF

• San Mateo County (Shoreway MRF) aka South Bayside

• Sunnyvale Material Recovery & Transfer Station (SMART)

• WC Upper Valley Recycling

• Allan Company Glendale Recycling Center

• CARTS - Cedar Avenue Recycling and Transfer aka Caglia

• The BARC - Bakersfield ARC

Rationale for counting facilities not in the group of surveyed facilities used in the Preliminary Findings Report

Analyzing a limited sample of California processing facilities reduces study costs compared to analyzing all California processing facilities. However, the nature of the sorting criteria in SB 343 is not necessarily conducive to a sampling study. For example, a material such as cartons could potentially satisfy the criterion and yet, by virtue of which facilities were selected for the sampling study, the results may not reflect this. For

example, by not targeting the CR&R Stanton facilities the study missed at least two other Southern California counties that are served by these facilities (we recommend counting these facilities as per recommendation 2.3 above).

CalRecycle should count all additional facilities that sort cartons and add counties they serve to the universe of counties for the purpose of calculating percentage of counties covered. This would be consistent with the methodology used elsewhere in the report.

Rationale for counting MRFs that accept cartons and produce mixed paper bales

CCNA data indicates that there are 21 MRFs in California (13 of which are not on CalRecycle's list targeted for the study) that state they accept cartons for recycling and receive materials from jurisdictions that include cartons in their curbside programs. They market mixed paper to end markets that accept cartons in the paper bales. While we don't know the specific end markets used by all CA MRFs, Appendix C provides information on end markets for mixed paper bales that contain cartons as well as end markets for Grade PSI-52 purchased from West Coast suppliers, which value the high-quality fiber contained in cartons and the reasonable yield rates obtained.

We strongly believe that CalRecycle criteria for excluding a material type and form (listed on page 9 of the Preliminary Findings Report and differently in Appendix 6) do not apply to cartons in mixed paper defined streams. Reasons for this are as follows:

• After correctly re-classifying cartons as fiber, the category matches the mixed paper defined stream category.

• Simply comparing the percentage composition of cartons in samples taken from the mixed paper defined stream at a MRF to the percentage of cartons in the residual stream at the same facility is not a valid comparison. The criterion CalRecycle lists states "the proportion [emphasis added] of the Material Type and Form in defined stream must exceed the proportion [emphasis added] of Material Type and Form in the disposed residual." In the file shared by CalRecycle with CCNA entitled "SB 343 Data Analysis Methodology – Facility" it is implied that annual commodity and residue disposal quantities were used to develop scaling factors that would provide these proportions. However, we understand that facility sales and disposal data were not available to CalRecycle, making this calculation impossible. If this is the case, this criterion is not a valid comparison.

• Even if quantities can be scaled by CalRecycle, the measurements of percent composition of cartons in the mixed paper defined stream may not have accurately captured findings regarding cartons. This is because certain material types, such as cartons, that are found in relatively low amounts in comparison to other material types, typically need to be treated differently in sampling studies than materials present in large quantities. For example, to achieve adequate accuracy and confidence in results, larger sample sizes of 200 or more pounds and more samples may need to be taken from each facility and in total. Based on a review of the raw sampling data, most mixed

paper samples appeared to contain from 0-4 aseptic or gable top cartons in them (applying a weight-to-units conversion factor). Any one additional carton that could have been found in a slightly larger sample would provide significantly different percentage results.

• For any type of evaluation of the percentage or proportion of cartons in mixed paper, it is important to omit mixed paper samples from the calculation estimating the portion of cartons in mixed paper bales for the facilities that are already sorting to Grade PSI-52 carton bales. In such facilities one would expect the portion of cartons in mixed paper to be extremely low and these low or zero value percentages should not be averaged with the facilities where cartons are marketed in mixed paper.

• Material types that are generated in low quantities relative to other material types are not “rare” as they should be expected to be found in proportionally small quantities in MRF material streams. In addition, combining aseptic and gable top cartons into one material type and form category as we recommend would result in a more prevalent carton stream versus splitting cartons into two separate streams.

The bottom line is, when a MRF publicly accepts cartons from communities that include them in their recycling programs, allows cartons to flow with other fiber into the mixed paper stream, and ships mixed paper bales to end markets that accept cartons in the mix, they are sorting cartons for recycling in the same manner as is the case for other fiber types in the mixed paper stream. Consequently, the cartons they receive should be considered recyclable. Inefficiencies in MRF sorting are not an indication of lack of cartons’ recyclability – rather, this is an indication of the need/opportunity to improve the MRF sorting performance – the technology for which is readily available.

CCNA continues to work with MRFs by providing grant funding and technical support to invest in equipment and share best practices to improve MRF carton sortation, and this will expand significantly in coming years, especially through Producer Responsibility Organization Plan implementation beginning in 2027.

Explain the Data and Methodology More Clearly and Transparently in the Final Report

CCNA’s team had difficulty interpreting certain aspects of the report that pertain to evaluating carton recyclability. While the information CalRecycle provided in response to our Public Records Act request was very useful, it was difficult to understand. We ask that CalRecycle publish a more-detailed description of the methodology and data sources as well as a clear explanation of how the various data were used.

Ideally, a reader should be able to recreate the findings based on information included in the report. This will better enable stakeholders to evaluate the validity of the methodology and data used, and to offer improved data and suggestions where appropriate, as we have here.

Invite Stakeholder Data Submissions and Publish this Information Where Appropriate

Going forward, we ask that CalRecycle define a process for stakeholders to submit data and information pertinent to evaluating whether SB 343 recyclable criteria are satisfied, and that CalRecycle agree to publish such data as deemed appropriate, as authorized in statute (PRC Section 42355.51(d)(1)(B)(iii)). While reviewing, vetting, and potentially validating such data is time consuming, the recyclable evaluations under SB 343 are too consequential to wait five years for the next study update.

CCNA Historical Investments and Proactive Initiatives in California

The Carton Council of North America is an industry organization formed in 2009, composed of four leading food and beverage aseptic and gable top carton manufacturers. Our mission has been to develop sustainable carton recycling in California and across the U.S., working with all stakeholders in the value chain. To date, we have invested more than

$4 million to help strengthen California’s local carton recycling programs. We fully support and share the State’s goal of building stronger, more sustainable recycling systems and are invested in further growing carton recycling in California.

In conclusion, CCNA’s data supports the inclusion of aseptic and gable top cartons as potentially recyclable in the final SB 343 report, as cartons meet the requirements of having at least 60% of households with access to recycling as well as being sorted for recycling by recycling facilities that collectively serve at least 60% of the state’s recycling programs. In support of the work of CalRecycle, we would be happy to supply additional information on anything mentioned herein as well as respond to questions that any of you may have going forward. Please do not hesitate to contact me.

Sincerely,

Ed Klein, President, Carton Council North America

Appendix A Full Analysis of Access Rate Methodology and Findings

Appendix B Review of Data on MRFs Accepting Cartons and How Cartons are Managed

Appendix C Cartons End Market Information

Footnotes:

1 According to CCNA's information, GreenWaste only processes materials at its Charles Street campus in San Jose, where they have two facilities adjacent to one another: one single-stream MRF and one Mixed Waste Processing MRF. We have assumed that the facility CalRecycle refers to here is what Carton Council refers to as "GreenWaste Materials Recovery Campus Single Stream" located at 625 Charles St. in San Jose with SWIS number 43-AN-0019.

2 CCNA refers to this facility as "Metropolitan Recycling" located at 2601 S Mt Vernon Ave in Bakersfield.

3 CCNA refers to this facility as "Recology Sonoma Marin" located at 1309 Dynamic St in Petaluma.

4 GreenWaste only processes materials at its Charles Street campus in San Jose, where they have two facilities adjacent to one another: one single-stream MRF and one Mixed Waste Processing MRF. We have assumed that the facility CalRecycle refers to here is what CCNA refers to as "GreenWaste Materials Recovery Campus Mixed Waste" located at 575 Charles Street in San Jose.

Comment 97:
Name: Jan Dell
Date received: 4/1/2024
Source: Email (lastbeachcleanup@gmail.com)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Dear CalRecycle – please confirm receipt.
As detailed in the report published by BAN and the Last Beach Cleanup in February 2023 (https://wiki.ban.org/images/9/9d/FactBriefingCaliforniaPlasticWaste.pdf), CalRecycle's findings on facilities sorting material types and forms of plastic waste were in error.

The attached fact brief addresses one major error previously identified in CalRecycle's SB343 assessment in more detail: The population served by facilities reported to sort specific material types and forms into plastic bales is grossly inflated due to CalRecycle's flawed methodology.

Through a Public Records Act request to CalRecycle, details of the assessment data were provided to The Last Beach Cleanup in February and March 2024. Specific documents are referenced.

For all material types and forms (plastic, paper, glass, metal), CalRecycle falsely counted the percent of population served by facilities sorting a specific material type and form in two ways:

1. An entire county's population was counted to be served by a facility sorting a specific material type and form if just one of numerous facilities reported sortation. For example, while only 2 of 17 Large Volume Transfer Processors in Los Angeles County reported sorting polypropylene (PP#5) into bales, the entire population of Los Angeles County of 9.8 million people (25% of the California population) was falsely counted as "served."
2. If a facility in one county (e.g. Potential Industries in Los Angeles) served even a small number of residents in other counties (e.g. Orange, Riverside, and San Bernadino), then the entire population of all four counties (Los Angeles, Orange, Riverside, and San Bernadino) were deemed to have been served.

Additionally, specifically for polypropylene rigids, CalRecycle falsely counted polypropylene as being sorted in two ways:

1. If the facility claimed to sort plastics into “mixed rigid plastics” bales. The predominant plastic material type and form in those bales that may actually be reprocessed is colored high density polyethylene (HDPE e.g. detergent bottles), not polypropylene. Secondary sortation and processing of polypropylene items in “mixed rigid plastics” bales is not performed.
2. If the facility claimed to sort plastics into “#3-7” or “#2-7” bales. There are no secondary plastics sorting facilities in the United States and export of mixed plastics #3-7 or #2-7 is prohibited by the Basel Convention.

Based on detailed assessment described in Section 6 which includes all 74 LVTP material recovery facilities (MRFs) in California, the percentage of California’s population served by LVTP MRFs claiming to sort polypropylene rigids in California is only 14%, which is significantly less than the 60% required by state law.

CalRecycle must acknowledge that the methodology employed for determining population served by facilities sorting a specific material type and form in the December 2023 SB343 Report was seriously flawed and retract and correct the sortation findings.

I am available to discuss at your convenience. I have made recommendations on how to use existing CalRecycle SWIS and RDRS data to perform a credible assessment of sortation.
Thank you,
Jan
Jan Dell
Independent Engineer
The Last Beach Cleanup
Email: lastbeachcleanup@gmail.com
www.lastbeachcleanup.org

Attachment Text: Fact Briefing: False Facility Sortation Methodology Employed by CalRecycle in the 2023 SB343 Report
Contents

1.Summary

In 2021, California passed SB343 Truth in Labeling law intended to protect California consumers from false recyclability labels.[1] Under SB343, the California Department of Resources, Recycling, and Recovery (CalRecycle) was required to publish data about the types of materials and forms recycled in California by January 1, 2024. On December 28, 2023, CalRecycle released the SB343 Material Characterization Study Preliminary Findings (SB343 Report).[2]

As detailed in the report published by BAN and the Last Beach Cleanup in February 2023, CalRecycle's findings on facilities sorting material types and forms of plastic waste were in error.[3]

This fact brief addresses one major error previously identified in CalRecycle's SB343 assessment in more detail: The population served by facilities reported to sort specific material types and forms into plastic bales is grossly inflated due to CalRecycle's flawed methodology.

Through a Public Records Act request to CalRecycle, details of the assessment data were provided to The Last Beach Cleanup in February and March 2024. Specific documents are referenced.

For all material types and forms (plastic, paper, glass, metal), CalRecycle falsely counted the percent of population served by facilities sorting a specific material type and form in two ways:

1. An entire county's population was counted to be served by a facility sorting a specific material type and form if just one of numerous facilities reported sortation. For example, while only 2 of 17 Large Volume Transfer Processors in Los Angeles County reported sorting polypropylene (PP#5) into bales, the entire population of Los Angeles County of 9.8 million people (25% of the California population) was falsely counted as "served."

2. If a facility in one county (e.g. Potential Industries in Los Angeles) served even a small number of residents in other counties (e.g. Orange, Riverside, and San Bernadino), then the entire population of all four counties (Los Angeles, Orange, Riverside, and San Bernadino) were deemed to have been served.[4]

Additionally, specifically for polypropylene rigids, CalRecycle falsely counted polypropylene as being sorted in two ways:

1. If the facility claimed to sort plastics into "mixed rigid plastics" bales. The predominant plastic material type and form in those bales that may actually be reprocessed is colored high density polyethylene (HDPE e.g. detergent bottles), not polypropylene. Secondary sortation and processing of polypropylene items in "mixed rigid plastics" bales is not performed.

2. If the facility claimed to sort plastics into "#3-7" or "#2-7" bales. There are no secondary plastics sorting facilities in the United States and export of mixed plastics #3-7 or #2-7 is prohibited by the Basel Convention.

Based on detailed assessment described in Section 6 which includes all 74 LVTP material recovery facilities (MRFs) in California, the percentage of California's population served by LVTP MRFs claiming to sort polypropylene rigids in California is only 14%, which is significantly less than the 60% required by state law.

2. Recommendations

California State Agencies must comply with, and enforce compliance with, California laws. It is not legal for CalRecycle to ignore requirements of SB343 that have been codified into state law. Truthful implementation and enforcement of state laws can only be achieved through accurate data assessment and credible statistical analysis. Based on this detailed assessment, we recommend:

CalRecycle must acknowledge that the methodology employed for determining population served by facilities sorting a specific material type and form in the December 2023 SB343 Report was seriously flawed and retract and correct the sortation findings.

CalRecycle must revise the SB343 Material Characterization Study as follows:

1. Employ the sortation data submitted by all 74 Large Volume Transfer Processors (LVTPs) MRFs to the legally mandated RDRS data to most accurately determine sortation at a statewide level. All facilities are legally required to report to RDRS and comprehensive data has been collected for years.

2. Only count polypropylene rigids separated into polypropylene category bales as being sorted as "PP#5 bales." Polypropylene rigid containers are not "sorted" into Mixed Rigid, Plastics #3-7, or Plastics #2-7 bales.

3. Require the separation of PET thermoforms into a unique category of material type and form since they cannot be recycled with PET bottles.

3. Comparison Shows Grossly Inflated Sortation Results

3.1 Comparison with CalRecycle's Recycling and Disposal Reporting System (RDRS) CalRecycle requires all California facilities to report a range of information through the RDRS system, including sortation of plastic by material types, forms, and weights of bales produced.[5] This information is available on a cumulative basis to the public through Public Records Act requests. The RDRS data is most credible because it is comprehensive to all MRFs and solid waste facilities, and reporting entities are bound by law to report truthfully through the RDRS system.

According to CalRecycle's SB343 Report, several types and forms of plastics were found, via informal phone surveys performed by consultants, to have a California population with access to sorting at high rates above 60%. However, CalRecycle's own

legally mandated RDRS data proves that the SB343 Report sorting rates are grossly inflated.

Table 1 shows a comparison of the percentage of facilities claiming to sort the material types and forms in question.

Polypropylene plastic forms identified by CalRecycle (PP Clear Single-Use Rigids, PP Pigmented Single-Use Rigids, PP Multi-Use) do not pass the SB343 sorting criterion of representing 60% of the population. According to CalRecycle's RDRS data, fewer than 15% of California MRFs sort polypropylene rigids into bales and less than 3% of California's polypropylene waste collected and sorted.[8] This is more proof that polypropylene waste does not meet SB343 requirements of being collected, sorted, and sold for 60% of the population. Furthermore, the few polypropylene bales that are created in California are likely exported to non-OECD countries or Mexico, as shown in the U.S. export data in the February 2023 BAN Report.[9] There are no U.S. domestic polypropylene recyclers within economical trucking distance since the closest polypropylene recycler to California is 2,300 miles away in Alabama.[10] Section 3.4 details proof of export of plastic waste found in documents obtained through the Public Records Act.

PET thermoforms alone do not pass the SB343 criteria for recyclability requiring that facilities covering 60% of the California population must be separating the material type and form. As detailed in CalRecycle RDRS data, PET thermoforms are only separated by 1-2 of the 75 MRFs according to CalRecycle data.[11] They cover less than 3% of California's population and nowhere close to the required 60%.

For the few PET thermoform bales claimed to be produced at MRFs, it cannot be asserted that the material is being reclaimed/reprocessed later as there are no PET thermoform recyclers in the United States and there is little market demand anywhere for PET thermoform recycling. In a PRA document, Pena's Disposal stated that they separate PET thermoforms for disposal and combine in PET bottle bales.[12]

The 100% facilities sortation rate for PET thermoforms stated in the SB343 Report may be due to the false combination of thermoforms with PET bottles into one category since PET bottles are commonly sorted by MRFs due to California Redemption Value.

3.2 Comparison with SB1335 Plastic Packaging Act

As described on CalRecycle's website, "SB 1335 aims to ensure food service packaging fits into the state's recycling and composting systems, encourage packaging design improvements to protect public health and wildlife, create more takeback and reuse options at state facilities, and reduce contamination in recycling and composting streams."[13]

SB 1335 requires CalRecycle to maintain a List of Approved Food Service Packaging,[14] which includes products that meet specific reusable, recyclable, or compostable criteria. Food service packaging products that must be approved include bowls, cups, plates, containers, and trays.

CalRecycle's List of Approved Food Service Packaging approves no type of rigid plastic bowl, cup, plate, container, or tray as recyclable.[15] This is in direct contradiction to the SB343 Report findings that imply that since all forms of PET, PP, and PE rigid food service items are allegedly sorted into bales, they are recyclable.

3.3 Comparison with 2021 California Recycling Commission Report

In 2021, the California Statewide Commission on Recycling and End Markets performed a comprehensive assessment for products and packaging to determine "What is Recyclable" in California.[16] The criteria were also 60% collection, sortation, and recycling/reclaiming capacity. The 2021 assessment report showed that only three types of plastic items met the criteria: PET#1 bottles, HDPE#2 natural bottles, and HDPE#2 colored bottles.[17] The end market demand and economics of plastic recycling have declined since 2021 and no new rigid plastic recycling operations have opened in California since 2021, so it is not reasonable to claim that more types of plastics are recyclable in California in 2023.[18,19]

3.4 Proof of Export of Plastic Waste by California MRFs

Evidence that specific California MRFs are exporting plastic waste:

3.4.1 343 In Person Survey

1. Greenwaste, LLC. San Jose, CA: Most common destination for plastic: SE Asia (Indonesia. Vietnam, and Philippines)

2. Penas Disposal Material Recovery Facility in Cutler (Visalia): Most common destination for plastic film is Mexico. For mixed rigid plastics, the most common destination is "International."

3.4.2 Data Entry for Site Visits

1. Napa Recycling: Polypropylene bales are sent to Malaysia and Vietnam.

2. Penas Disposal Material Recovery Facility in Cutler (Visalia): Mixed rigid plastics are sent to "International" destinations.

3. Potential Industries: Mixed Rigid Plastics are shipped to Southeast Asia. PP#5 bales are shipped to Mexico.

4. SANCO Escondido: Plastic film is turned into fuel by PreZero. PP#5 and Polystyrene #6 are exported.

4. California Legal Requirements for Determining Sortation

California law requires:

§ 42355.51 (B)(i)The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020, that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.(ii)The department may adopt regulations modifying this requirement to encompass transfer or processing facilities other than large volume transfer or processing facilities, as the department deems appropriate for achieving the purposes of this section.[20]

5. CalRecycle's False Methodology on Determining Sortation

In the SB343 Report on page 8, CalRecycle states that they employed "counties" to define "recycling programs" as stated below:

"Estimating Proportions of Material Types and Forms Sorted into Defined Streams by LVTPs: CalRecycle estimated the percentage of the state being served by LVTPs sorting each Material Type and Form into defined streams for recycling processing. Using survey and sorting data, CalRecycle staff estimated the percentages in terms of (1) the proportion of state's recycling programs (at the county level) and (2) the proportion of the statewide population, served by those LVTPs."

CalRecycle's methodology to for determining the percentage of population served by facilities sorting a particular Material Type and Form was described in the SB343 Report on page 9:

"Survey data indicated which of 27 survey facilities had each defined stream present, as well as which jurisdictions each survey facility serves. This produced the list of counties served by facilities with defined streams available for each Material Type and Form.

CalRecycle references the State of California Department of Finance's (DOF) dataset entitled E-1 Cities, Counties, and the State Population and Housing Estimates with Annual Percent Change - January 1, 2022, and 2023 to determine jurisdiction/county populations.[21]

DOF population data (see Collection for Jurisdiction Recycling Programs above) were used to calculate the population served by one or more facilities with one or more defined streams available for each Material Type and Form."[22]

As described above, CalRecycle assumed that if just one facility in a jurisdiction (county) sorted a Material Type and Form, then the entire jurisdiction had access to sortation. CalRecycle also assumed that an entire neighboring county would have access to sortation if just a small portion of the county was served by a facility in a different county. This is clearly a statistically flawed approach that wildly inflates the sortation rates for all jurisdictions, including large counties.

This flawed methodology cannot be employed to make determinations of sortation under SB343 (42355.51).

Additionally, specifically for polypropylene rigids, CalRecycle falsely counted polypropylene as being sorted in two ways:

1. If the facility claimed to sort plastics into "mixed rigid plastics" bales. The predominant plastic material type and form in those bales that may actually be reprocessed is colored high density polyethylene (HDPE e.g. detergent bottles), not polypropylene. Secondary sortation and processing of polypropylene items in "mixed rigid plastics" bales is not performed.

2. If the facility claimed to sort plastics into "#3-7" or "#2-7" bales. There are no secondary plastics sorting facilities in the United States and export of mixed plastics #3-7 or #2-7 is prohibited by the Basel Convention.

Employing detailed data secured through the Public Records Act, The Last Beach Cleanup performed a detailed analysis of the facilities claiming to sort polypropylene rigids into polypropylene bales and the California population served.[23] This analysis was focused on one category of material types and forms (polypropylene or PP#5), but the flaws shown are also evident in CalRecycle's analysis of other categories of materials type and forms, too.

Table 2 shows how CalRecycle falsely determined a high sorting rate of 89% for polypropylene rigid containers. Table 2 shows the population of California's 58 counties,[24] the county location of the nine LVTP Material Recovery Facilities claiming to sort PP5 rigid bales, the neighboring counties that have limited service by those LVTP MRFs, and additional LVTP MRFs who sort mixed rigids, plastic #3-7, or plastics #2-7.[25] As shown in Table 2, CalRecycle falsely counted the entire population of a county ashaving access to facilities that sort PP5 rigids even if only two facilities in a large population zone (eg Los Angeles) accepted PP5 rigid. The entire populations of Orange, Riverside, and San Bernadino counties were also falsely claimed as having 100% coverage even though zero LVTP MRFs in those counties reported sorting PP5 rigids. Lastly, in other counties, credit was taken for "sorting" mixed bales that are not polypropylene mixed rigids only are shown.

Table 2: Detailed County Assessment County Showing Recycle False Assessment of Percentage of California Population with Accessed to Facilities Sorting Polypropylene Rigid Containers

6. Corrected Assessment of California Population Served by Facilities Sorting Polypropylene Rigids

Employing information on LVTP MRF facilities listed in CalRecycle's Solid Waste Information Services (SWIS) database,[26] it is possible to accurately estimate the California population served by facilities

sorting polypropylene rigids. Based on detailed review of the LVTP MRFs listed in SWIS, 74 LVTP MRFs in California were identified. This is about double the number of LVTP MRFs that CalRecycle assessed as

part of their SB343 Report. Appendix 1 shows the details of the 74 LVTP MRFs identified in the SWIS system and whether they were included in the SB343 Report assessment by CalRecycle.

Table 3 shows two corrected assessments:

Scenario 1: Percentage of Californians covered by facilities claiming to sort PP5 based on all 74 LVTP MRFs in California. Based on a fractional assessment of population equal to the fraction of LVTP MRFs sorting PP5 bales, only 14% of Californians are served by LVTP MRFs that sort PP5 bales.

Scenario 2: Percentage of Californians covered by facilities claiming to sort PP5 based CalRecycle's Short List of 38 LVTP MRFs in California. Based on a fractional assessment of population equal to the fraction of Short List of LVTP MRFs sorting PP5 bales, only 23% of Californians are served by LVTP MRFs that sort PP5 bales.

Conclusion: the percentage of California's population served by MRFs claiming to sort polypropylene rigids is in the range of 14 to 23%, which is significantly less than the 60% required by state law.

Table 3: Corrected Percentage of Population Served by MRFs Claiming to Sort Polypropylene Rigids

Appendix 1: List of 74 LVTP MRFs in California

Footnotes:
1 California Code, Public Resources Code - PRC § 42355.51
2 CalRecycle, SB343 Material Characterization Study Preliminary Findings, December 28, 2023
3 Basel Action Network and The Last Beach Cleanup, Fact Briefing: California State's Own Data Reveals Consumer Plastics are not Recyclable and are Being Exported Illegally, February 12, 2024
4 Public Record Act, CalRecycle Excel Workbook "Data Entry for Site Visits - Summer 2023"
5 CalRecycle, Recycling and Disposal Reporting System (RDRS)
6 CalRecycle, SB343 Material Characterization Study Preliminary Findings, December 28, 2023
7 The Last Beach Cleanup, SB343 Assessment, Quarterly Data Provide by CalRecycle via Public Records Request
8 The Last Beach Cleanup, SB343 Assessment, Quarterly Data Provide by CalRecycle via Public Records Request
9 Basel Action Network and The Last Beach Cleanup, Fact Briefing: California State's Own Data Reveals Consumer Plastics are not Recyclable and are Being Exported Illegally, February 12, 2024
10 The Last Beach Cleanup, SB343 Assessment, Survey of Post Consumer Plastic Recyclers

11 The Last Beach Cleanup, SB343 Assessment, Quarterly Data Provide by CalRecycle via Public Records Request
12 Public Record Act, CalRecycle Excel Workbook "Data Entry for Site Visits - Summer 2023"
13 CalRecycle, Sustainable Packaging for the State of California (SB 1335), Food Service Packaging at State Facilities
14 CalRecycle, List of Approved Food Service Packaging, accessed on January 24, 2024
15 CalRecycle, List of Approved Food Service Packaging, accessed on January 24, 2024
16 California Statewide Commission on Recycling and End Markets website
17 CalRecycle, 2021 Commission Report
18 LetsRecycle.com, "'Significant pressure' on plastic recyclers, BIR says," October 10, 2023
19 The Last Beach Cleanup, SB343 Assessment, Survey of Post Consumer Plastic Recyclers
20 Cal. Pub. Resources Code § 42355.51
21 State of California Department of Finance, E-1 Population and Housing Estimates for Cities, Counties, and the State - January 1, 2022 and 2023
22 CalRecycle, SB343 Material Characterization Study Preliminary Findings, December 28, 2023
23 Public Record Act, CalRecycle Excel Workbook "Data Entry for Site Visits - Summer 2023"
24 State of California Department of Finance, E-1 Population and Housing Estimates for Cities, Counties, and the State - January 1, 2022 and 2023
25 Public Record Act, CalRecycle Excel Workbook "Data Entry for Site Visits - Summer 2023"
26 CalRecycle, Solid Waste Information System (SWIS)

Comment 98:
Name: Katie Davey
Date received: 4/1/2024
Source: Email (kdavey@dairyinstitute.org)
Email includes attachments: Yes
Comment: Greetings, Dairy Institute of California and our coalition partners the Agricultural Council of California, California Grocers Association and California League of Food Producers appreciate the opportunity to submit public comments regarding SB 343 Material Characterization Study Preliminary Report Findings. Our comment letter is attached. Please feel free to let me know if you have any questions. Thank you, Katie
Katie Davey
Executive Director
DAIRY INSTITUTE OF CALIFORNIA
(916) 441-6921 | (916) 813-9589
kdavey@dairyinstitute.org
www.dairyinstitute.org
1127 11th St. Suite 718, Sacramento, CA 95814

Attachment text: April 2, 2024
Ms. Krystal Acierto
Acting Director of CalRecycle
Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025
Via email to: wastechar@calrecycle.ca.gov
Re: SB 343 Material Characterization Study Preliminary Report Findings

Dear Ms. Acierto,
Dairy Institute of California and our coalition partners the Agricultural Council of California, California Grocers Association and California League of Food Producers appreciate the opportunity to provide public comment regarding SB 343 Material Characterization Study Preliminary Report Findings. We appreciate the enormity of this undertaking and effort to establish a system in California that truly recycles materials. Product packaging is an important aspect of our members business operations from the ability of the packaging to help protect the quality and freshness of dairy products, to utility in the transportation process to our customers. Dairy product manufacturing lines are customized around the type of packaging material utilized to contain a particular product.
We are concerned about the Material Characterization Study (MCS) Preliminary Findings, specifically for steel food cans and lids as well as aseptic and gable top cartons being incorrectly classified as un-recyclable.
Steel food cans and lids
Steel food cans and lids are utilized by dairy processors for shelf stable items such as condensed milk. Steel cans and lids are utilized by product manufacturers because they are highly recyclable and there is a market demand for the recycled material. Steel food cans and lids met the first criteria in the MCS which found this item is collected in 95% of recycling programs that serve at least 60% of the population. But it was rather curious to see the results that only 57% of large volume processors sort steel food cans into defined streams for sale. This is surprising given the use of magnets to separate out the steel from the rest of the recycling stream. We urge CalRecycle to review the accuracy of the data set in the study and consider additional data regarding the recycling of steel cans and lids prior to the finalization of the MCS.
Gable-top Cartons (non-CRV) and Aseptic Containers (non-CRV)
Gable-top cartons and aseptic containers are common product packaging materials used for fluid milk, cream, half-n-half, buttermilk, juice, protein drinks as well as almond and oat beverage. Half-pint milk and juice cartons are widely used in California's school meal programs and are prized for their stack ability and portability from school to home via Regional Food Bank's Backpack Programs.
According to CalRecycle's SB 343 Material Characterization Study Preliminary Findings, gabletop cartons (non-CRV) and aseptic containers (non-CRV) did not meet the either of the 60% thresholds for recyclability criteria in SB 343.
This is an issue for Dairy Institute members and coalition members who utilize this packaging type for their fluid milk products and want to see the recycling symbol remain on their products packaged in aseptic and gable top cartons. The loss of the recycling symbol on aseptic and gable top cartons will lead to local jurisdictions no longer

accepting these items for recycling curbside, resulting in a reduction in recycling rates across California. This would negatively impact the ability of these packaging materials to meet SB 54 requirements for all single use packaging materials (including cartons) to be recycled by 2023.

If fluid milk and beverage processors were banned from using gable top cartons and aseptic containers, they would have to transition their fluid beverage processing lines from cartons to HDPE or PET beverage bottles which would require a complete facility and manufacturing equipment retrofit.

Cartons are flat, compact and take up very little space in a fluid processing facility. Requiring a switch to HDPE or PET beverage bottles would require an increase in the square footage of manufacturing space to accommodate the plastic blow-mold machine or the pre-molded pallets of HDPE or PET bottles. Many of our fluid milk processors are operating in limited footprints and simply do not have the space to expand their facilities. Additionally, the cost to install new manufacturing equipment to accommodate the change comes with a hefty price tag ranging from an estimated $1.7 to $4.3 million for a small fluid milk processor and upwards of $40 million for a standard sized fluid milk processor.

We believe the data collection efforts for the Material Characterization Study did not capture the full picture of gable top carton and aseptic container/cartons recycling in California and urge CalRecycle to consider current additional recycling data from the Carton Council of North America (CCNA).

CCNA has identified over 60 communities where California residents have access to aseptic and gable top carton recycling that were not counted in the SB 343 study. If these communities are included, then 69% of California's population has access to recycling aseptic cartons and 72% can recycle gable-top cartons. With the inclusion of this additional information, aseptic and gable top cartons exceed the threshold of recyclability based on access as defined in SB 343.

Additionally, CCNA's data identifies 32 MRFs in California that accept aseptic and gable top cartons as part of their inbound stream for recycling. Eleven of those MRFs sort cartons into PSI Grade 52, while the remaining 21 MRFs bale cartons included in mixed paper to be sent on for recycling. CCNA believes that, for MRFs to accept cartons from communities that instruct their residents to put them in their recycling bin and that include cartons in the mixed paper they produce, this should sufficiently qualify these MRFs as "sorting cartons into a defined recycling stream." With all the MRFs that CCNA identified as accepting and processing cartons for recycling, the cartons meet the recycling thresholds based on sortation, as specified in SB 343. CCNA has invested in providing carton recycling program support for 1,635 schools across 92 districts involving 934,000 students in California to ensure they have carton recycling programs for nutritional beverages supplied to them in cartons.

We encourage CalRecycle to consider this additional data regarding the recyclability of aseptic and gable top cartons in California prior to publishing the final Material Characterization Study. We are deeply concerned about steel food cans and lids, aseptic, and gable top cartons being incorrectly classified as un-recyclable. The loss of a recyclability designation for these material types could subsequently result in them being removed from curbside collection programs and no longer being accepted at MRFs. This would lead to plummeting recycling rates for these packaging materials.

This is counter to the state's recycling goals and the mission of SB 54 to increase to recycling rates for all materials to 100% by 2032.
Ensuring that the recycling symbol remains on steel cans and lids, aseptic and gable top cartons is important to our members as they work to meet the recycling goals outlined in SB 54. Thank you for your consideration of our concerns.

Comment 99:
Name: Michael (Mike) Smaha
Date received: 4/2/2024
Source: Email (msmaha@cancentral.com)
Email includes attachments: Yes
Comment: Mr. Egli, Attached, please find comments from the Can Manufacturers Institute (CMI) on the SB 343 Material Characterization Study Preliminary Findings report. Please let me know if you have any questions.
Best regards,
Mike Smaha
Vice President, Government Relations
Can Manufacturers Institute
The Homer Building, 12th Floor
601 13Th Street, NW
Washington, DC 20005
(m): 202-876-4347
www.recyclingrefundswork.org

Attachment letter text: Michael J. Smaha
Vice President, Government Relations
The Homer Building
Industrious, 12th Floor
601 13th Street, NW
Washington, DC 20005
Cell: (202) 876-4347
Email: msmaha@cancentral.com
April 2, 2024
Submitted Electronically via wastechar@calrecycle.ca.gov
Mr. Ryan Egli
California Department of Resources Recycling and Recovery (CalRecycle)
1001 I Street, MS-24B
P.O. Box 4025
Sacramento, CA 95812-4025
Re: Initial Questions - California Senate Bill 343 Preliminary Findings Report

Dear Mr. Egli:
The Can Manufacturers Institute (CMI) appreciates the opportunity to comment on the SB 343 preliminary findings report released in December 2023.

CMI is the U.S. trade association of the metal can industry and its suppliers. Our members employ 28,000 workers in 36 states and produce more than 135 billion steel

and aluminum cans for the food, beverage, aerosol and general packaging markets annually.

CMI is perplexed by any findings that would show steel cans are not accepted at recycling centers as it is an easy metal to recycle because of its magnetic properties and it is a valuable commodity for recycling facilities. It is hard to believe the findings for steel food cans and lids, specifically “criteria #2” that found only 57 percent of these products are sorted by large volume processors (LVP). At the same time, “criteria #1” found that steel food cans are collected in 95 percent of recycling programs that serve at least 60 percent of the state’s population. It does not make sense that 57 percent of LVPs sort steel food cans into defined streams for sale, while 95 percent of the California population is served by a recycling program that accepts them. CMI is not aware of any processors who are not able to accept and sort steel food cans using magnets, nor are we aware of any processors not interested in selling this highly valued commodity with demand from a healthy and robust end market. In fact, research by ASTRX and The Recycling Partnership found that 10 out of 11 material recovery facilities expressed a strong preference for steel cans, due to ease of sortation and decent markets and value. According to Resource Recycling, the March 2024 price of sorted, baled steel cans was $214 per ton, up from one year ago, when the value was $191 per ton

Steel food cans are widely accepted in local recycling programs, whether through curbside or drop off locations throughout the country. According to The Recycling Partnership, 98 percent of Californians have access to recycling programs that accept steel cans. They also put California’s household access rate for steel and aluminum aerosol containers at 70 percent. In 2021, the American Iron and Steel Institute estimated the recycling rate for steel cans to be 58 percent. This national rate is based on available data from government and steel can industry sources. This national rate accounts for the diversity in state recycling rates. It includes states that do not have robust recycling systems, along with those that do, such as California. This is apparent in your criteria #1 finding that steel food cans are collected in 95 percent of recycling programs that serve at least 60 percent of the state’s population.

Methodology Questions on the Steel Food and Aerosol Can Findings Through a public records request, CMI was able to review the survey questionnaire results for LVPs. CMI continues to have several questions surrounding the methodology and results for steel food and aerosol cans.

Survey Questions

Are both commercial and residential customers included in the 60 percent access threshold in criteria #2? Or does the 60 percent threshold only include residential customers?

Inconsistent Data and Questionnaire Responses

Of the LVPs who responded to the August 7, 2023, phone survey, four responded that they do not regularly aggregate metal for sale at their facility. Four LVPs had no response. Without sufficient data, how can the preliminary findings conclude that steel aerosols and steel food cans did not exceed the 60 percent threshold for criteria #2?Column AL of “SB 343 Phone Survey8-7-23” spreadsheet asks, “What technologies and equipment are used for sorting recyclable materials at your facility?” Did some respondents not answer? Was there a standardized question being asked to each respondent? What explains the inconsistency between those who responded and those who did not? CMI raises these questions because it could have influenced the finding’s result and skewed the results of the survey.

Facility Specific Questions

Some of those respondents who answered said initially they do not regularly aggregate metal for sale at their facilities (column AP in the “SB 343 Phone Survey8-7-23” spreadsheet), but later in the survey, the facility in Placerville responded that all material is sent to a secondary site. Is this material sent out of state? Is the secondary site where the metal is collected and sorted? How can CalRecycle determine if the communities of Cameron Park, El Dorado Hills, Placerville and El Dorado County are being serviced by the Placerville LVP? Was that population included in the threshold for criteria #2?

Signal Hill ID #23 (row 24 in the “SB 343 Phone Survey8-7-23” spreadsheet) is another facility that answered no to regularly aggregating metal for sale. Further in the survey, it answered it sends “metal and plastic” to Escondido. What type of metal? Ferrous or non-ferrous? Surely the communities of Rancho Pallo Verdes, El Segundo, Signal Hill, Lakewood, Buena Park, La Morada and La Palma are recycling metal in their recycling bins. It does not seem possible that Signal Hill wouldn’t be accepting those metals.

Lack of Harmonization with SB 54

SB 343’s goals clearly complement those of SB 54, the act establishing an extended producer responsibility program in California. Like SB 343, SB 54 includes a requirement for CalRecycle to publish a list of what is and is not considered recyclable in California. The list published pursuant to SB 54 will be used to determine which items must be collected for recycling in California and the list published pursuant to SB 343 will be used to determine which items can carry the recycling symbol or other “recyclable” claim. Presumably, items that can carry a “recyclable” claim should generally be the same as those collected for recycling in California. Given the direct relationship between the two, it is unclear to CMI why CalRecycle elected to use two different categorizations of materials for the two lists. This adds significant confusion, as a company’s packaging could be included in different categories with different data points used to evaluate it depending on which list is being reviewed. For example, aluminum aerosols appear to be encompassed within the non-California Redemption Value aluminum cans and lids category in the draft SB 343 Material Characterization Study (MCS) but are their own category with aerosol-specific collection and sorting numbers in the draft SB 54 Covered Material Categories (CMC) list determinations. In fact, for metal overall, the draft SB 343 MCS includes only 10 categories while the draft

SB 54 CMC list includes double that (20 total). CMI believes such differences confuse stakeholders and detract from efforts to improve recycling in California. CMI recommends that CalRecycle fully align the material type and form categories in the SB 343 MCS with those in the SB 54 CMC list.

Data Issues Resulting in Wrong Conclusions

As previously mentioned, CalRecycle used the results from the SB 343 preliminary findings report to draft its SB 54 covered materials category list, also released in December. That list classifies steel food cans as not “potentially recyclable.” How can CalRecycle conclude that steel food cans are not deemed fully recyclable in California?

> Did CalRecycle differentiate between steel aerosol and steel food cans or were all steel cans lumped together in one single response? This distinction is crucial because companies who package their products in steel food cans are confused as to why these products would no longer be recyclable if these results stand.
>
> Are steel cans and tin cans one-and-the-same or were there instances where steel and tin cans were counted separately by the survey respondents?
>
> Do the criteria used to determine SB 343’s material characterization study make sense? Are the right criteria used or should CalRecycle consider different criteria?

In closing, CMI believes the preliminary findings are inaccurate and based on faulty results. CalRecycle should not rely on the findings to determine that steel food or aerosol cans do not meet criteria’s #1 or #2. Therefore, California should maintain that steel food and aerosol cans are recyclable, especially because of how easily steel is recycled because of its magnetic property and its value to a recycling facility.

Please do not hesitate to to contact me if CMI can answer questions and provide additonal input.

Best regards,
Michael Smaha
Vice President, Government Relations
Can Manufacturers Institute

Comment 100:
Name: Yalin Li
Date received: 4/2/2024
Source: Email (yalin@calpsc.org)
Email includes attachments: Yes
Comment: Hello CalRecycle Material Characterization Team, Please see the attached document for the California Product Stewardship Councils comments on the draft SB 343 Preliminary Findings Report. Thank you for the opportunity to provide comments.
Thanks,
Yalin Li | Senior Associate

CPSC
California Product Stewardship Council
1822 21st Street, Suite 100
Sacramento, CA 95811
C: (916) 206-0029
Yalin@calpsc.org

Attachment text: April 2, 2024
CalRecycle Material Characterization Team,
Email to: wastechar@calrecycle.ca.gov
RE: Comments on SB 343 (Allen, 2021) Material Characterization Study Preliminary Findings.
Dear CalRecycle Material Characterization Team,
We appreciate the opportunity to provide comments on the on SB 343 (Allen, 2021) Material Characterization Study Preliminary Findings Report (Report). The California Product Stewardship (CPSC) is a 501(c)(3) organization with an extensive network of local governments, nongovernment organizations, businesses, and individuals supporting policies and projects where producers share in the responsibility for managing problematic products at end-of-life.

CPSC staff serve as seated members of many of CalRecycle's program Advisory Committees/Board, including Vice Chair of the SB 54 Advisory Board, Chair of the Mattress Advisory Board, Vice Chair of the Carpet Advisory Committee, and Past Vice Chair of the Illegal Dumping Technical Advisory Committee. CPSC also hosts monthly policy calls with our funders and the Statewide Textile Recovery Advisory Committee (STRAC), a committee of textile industry experts.

CPSC appreciates that SB 343 will reserve the use of the word "recyclable" and the chasing arrow symbol only for the materials that are truly recycled in most California communities and are routinely sold to manufacturers to make new products. The chasing arrows symbol has been a source of confusion for some time. Consumers often equate the 'recycle' word and symbol with what is accepted in curbside recycling bins. The problem arises when local jurisdictions no longer accept certain resin types of plastic, despite the presence of the iconic chasing arrows symbol. This confusion and the resulting waste contamination overwhelms the recycling stream, adding unnecessary costs and burden on local material recovery systems. Proper education is predicated on effective labeling to reduce contamination in our recycling system and improve consumer confidence.

Our comments herein relate to the Material Characterization Study Preliminary Findings Report released by CalRecycle on December 28, 2023:

1. Methodological Soundness

The Material Characterization Study primarily targeted large-volume transfer/processors. While this preliminary finding report serves as a valuable starting point, we recommend expanding the scope of future studies to capture the flow of

materials more comprehensively within small-to-medium transfer or processing facilities. Certain products with gaps in proper recycling infrastructure in state, such as textiles, have recovery efforts in place at the regional level, involving out-of-state actors, and often on small to medium scales.

2. Data Accuracy

Volumes for material collection may not be accurate – most notably for metal and textiles. CPSC has found higher rates in our Los Angeles and San Jose audits/waste characterizations.

The City of LA's recycLA Franchise Program reported a total of 215,695 tons of textiles collected from black bins with an average of 71,898 tons of textiles per year. This amounted to a 6.02% annual average composition of the total black bin commercial waste stream.

The GreenWaste facility in San Jose diverted a total of 5,460 lbs. (2.73 tons) of textiles from their recycling stream in 1.5 days, which equates to 960,960 tons annually at 22 days per month for 12 months.

3. Convenient Collection

There currently exists an absence of convenient collection programs for bulky items, such as solar panels, and hazardous waste, like gas cylinders. Existing household hazardous waste (HHW) collection programs are not seen as very convenient for most consumers. In the absence of a permanent convenient collection program, pilot projects are essential in allowing these products to be properly collected and then recycled or diverted from the waste stream. CPSC has been working with local jurisdiction on pilot projects to better understand how to streamline a recycling program for hard-to-manage products, such as solar panels. While these products aren't part of curbside programs, jurisdictions often offer drop-off or by appointment pick-up services for these products, like the California Mattress recycling program. Considerations should be made to audit recycling programs outside of curbside recycling to get a more comprehensive understanding how many and what types of recycling systems are available in the State.

Less than 1% of the statewide recycling programs accept apparel and textiles for residential curbside collection as textiles are hard to recycle due to infrastructural limitations. CPSC supports leaving textiles off the SB 343 list, at this stage due to ongoing textile EPR policy development. Garments should no longer reflect the chasing arrows without an established program.

CPSC is the official sponsor of various bills during the 2023/24 legislative session that would help establish an official program to support the addition of certain materials to the SB 343 list that do not currently fall under the regulations. The below bills would create programs with transparent and responsible end markets that will qualify the covered products to use the chasing arrows under the requirements proposed by SB 343.

I. AB 2 (Ward): Recycling: solar photovoltaic modules, would add customer-owned solar panels to the Covered Electronic Waste (CEW) program, representing about 18% of the panels in service today. The remaining 82% would follow a more traditional EPR type structure. By expanding the existing CEW, old “customer-owned” solar panels will be collected, processed, and recycled by the same companies that provide these services for other e-waste products.

II. SB 707 (Newman): Responsible Textile Recovery Act of 2023, which proposes a program that will support collectors, sorters, and processors to establish necessary infrastructure and to access transparent responsible end markets. SB 707 would support CalRecycle to add textiles back to the 343 list, recognizing that textile materials are valuable commodities for recovery that are growing rapidly in California waste streams.

Thank you for your work on this historic piece of legislation that will improve our materials management system and protect our environment. We look forward to the next version of the Material Characterization Study and staying engaged in the entire process.

Please feel free to contact me if you have any questions.

Joanne Brasch, Director of Advocacy and Outreach
California Product Stewardship Council

CPSC Vision

Producers have the primary responsibility to establish, fund, and manage end of life systems for their products with state government setting the performance goals and ensuring accountability and transparency.

CPSC Mission Statement

To shift California’s material economy from a linear model that subsidizes resource extraction, including ratepayer financed collection and disposal, towards a circular economy that relies upon producer-financed and managed recovery programs overseen by state agencies with all participants compensated for their contributions, while improving the health and well-being of all Californians.

Comment 101:
Name: Cori Menkin Herbig
Date received: 4/2/2024
Source: Email (cori.herbig@effem.com)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: To whom it may concern, Attached, please find an official comment from Mars, Inc. on the SB 343 Material Characterization Study Preliminary Findings Report. Please don’t hesitate to reach out with any questions or concerns you may have. Thank you for your time and consideration.

Sincerely,
Cori Menkin Herbig
(she/her/hers)
U.S. States & Local Public Affairs Director
Public Affairs
+1 862.221.8521
cori.herbig@effem.com

Attachment Text: March 26, 2024
CalRecycle
P.O. Box 4025
Sacramento, CA 95812-4025
To Whom it May Concern:
I am writing on behalf of Mars, Incorporated. As you may know, Mars' diverse and expanding portfolio of snacking, food, and pet care products and services includes some of the world's best-loved brands, including Ben's Original™, CESAR®, Cocoavia®, DOVE®, EXTRA®, KIND®, M&M'S®, SNICKERS®, PEDIGREE®, ROYAL CANIN®, and WHISKAS®. We are creating a Beter World for Pets through our global network of pet hospitals and diagnostic services, including AniCura, BANFIELD™, BLUEPEARL™, and VCA™. In California, Mars is proud to employ over 9,800 Associates at our VCA™ Headquarters in Los Angeles, NATURE'S BAKERY® Headquarters in Pasadena, Mars Pet Nutrition factory in Victorville, and 326 VCA™, BANFIELD™ and BLUEPEARL™ pet hospitals.

At Mars, we know that the world we want tomorrow starts with how we do business today. It's this belief that drives our commitment to sustainability. We know it's essential for stakeholders throughout the lifecycle of consumer products to come together to make end-to-end system changes that will truly transform our waste management system. As such, we have already made extensive investments and commitments to make consumer product packaging more sustainable and expedite the transition to a circular economy. It is critical that as we move forward collectively toward circularity that we do so in a way that is both effective and feasible. As the preliminary findings report currently stands, we have a number of concerns. They are outlined generally as follows:
1. Access rates as proxy for recyclability

The FTC Green Guides (https://www.ftc.gov/news-events/topics/truth-advertising/green-guides) has provided clarity for brands about how to speak about sustainable packaging initiatives. There is a lot of gray area in the space of environmental claims, and the FTC Green Guides have provided important guardrails for brands looking to provide transparent information about their packaging decisions.

Where possible, we would like to see SB 343 align more closely to the FTC Green Guides in terms of methodology and metrics. While imperfect, we think access rates are a clean metric that reflect what is being sorted in MRFs and what is being moved to end markets. Information about accepted materials lists are visible to all and can easily be verified.

Also, using access rates as a proxy for recyclability allows for materials that use separate collection systems to be evaluated. Today, mono-material PE films are not accepted in most curbside programs, but there is much broader access to PE film recycling through store drop off programs.

In a Study published by RRS on Nov 15,2022 they demonstrated that 87.6% of Californians have access to this program (LINK [https://sustainablepackaging.org/wp-content/uploads/2022/11/CA-Regional-LDPE-Study-Final-11.07.22-1.pdf])

In the defined Retail Take Back stream, at least 85% of the material from those retail locations gets recycled.

This represents 17.45 MM lbs of high quality, in demand material being collected in California. The most recent study on recycling rates for PE film conducted by Sitna based on 2021 reprocessor data shows a growth of 7.9% for Retail Take Back (LINK [https://www.stinainc.com/view/annualrecycling])

CalRecycle should require participants who claim they comply with this stream be able to substantiate that data with third party testing or certification.

2. Access rates methodology

Regarding access assessment, it is unclear whether CalRecycle's method is consistent with the Sustainable Packaging Coalition (SPC) standard, historically followed by the industry. Their most recent methodology was shared in a 2022 report https://sustainablepackaging.org/wp-content/uploads/2022/03/UPDATED-2020-21-Centralized-Study-on-Availability-of-Recycling-SPC-3-2022.pdf). It appears that CalRecycle considers accepted or explicitly not accepted (p.4, SB 343 Preliminary Findings Report), but it is not clear how those binary categories overlaps with the below acceptance categories. We recommend considering the SPC categories of:

i. "Explicitly accepted: the packaging type is specifically mentioned or conveyed through a photo or image as being accepted.

ii. Implicitly accepted: a broader category of packaging is accepted and/or similar items are accepted.

iii. Unclear if accepted or prohibited: program guidelines were assessed to be contradictory and/or ambiguous.

iv. Implicitly prohibited: a broader category of packaging is prohibited and/or similar items are prohibited.

v. Explicitly prohibited: the packaging type is specifically mentioned or conveyed through a photo or image as being prohibited."

These categories acknowledge that there may be materials and formats that don't neatly fit into lists that have been created by many independent actors (each

municipality generates unique lists today), and that the lists have not been updated uniformly to reflect what the municipalities truly want to receive. The category of "implicitly accepted" might serve as a vital consideration for packaging that is technically recyclable but not yet clearly communicated at the municipal level. Until a harmonized state acceptance list is established, the "implicitly accepted" category could foster innovation and enhanced design.

3. Sortation testing methodology

More detail is requested on the sortation test methodology. It does not appear to align with practices used by the industry today. The methods appear to be subjective and not reproducible by outside organizations.

As companies attempt to make packaging changes to design for recyclability, it is very important to set a sortation method that can be replicated readily. While assessing the recyclability of an individual package is a different challenge that assessing the recyclability of a material category, we would like to see CalRecycle endorse industry-aligned sortation tests to streamline efforts. The Association of Plastic Recyclers has engaged stakeholders across industry for many years to develop this sortation methodology. Especially for plastic based packaging, we recommend building on APR's sortation methodology (https://plasticsrecycling.org/apr-design-guide), which serves as a strong standard that can be validated by third parties, government agencies and producers.

4. Paper-based packaging

For paper-based packaging, the distinction between "Composite Food Service Paper & Packaging" and "Composite Fiber" needs clarification. A category of paper-based packaging that is designed to be recyclable in a paper mill receiving mixed paper bales does not appear to fit into any category appropriately. Many countries around the world are clearly defining the boundaries of what is recyclable vs. non-recyclable paper-based packaging. We would encourage CalRecycle to reference the work done by hundreds of stakeholder companies in Europe as part of the 4evergreen Alliance. They provide clear recyclability guidelines and testing methodology to confirm that paper-based packaging is compatible with recycling. A similar project may need to be developed in the US setting, but there are strong learnings that we can build on from this initiative. For example, the definition of composite fiber as "combined with large amounts of other materials" requires further detail to aid proper categorization and innovation in packaging design.

We caution against including "candy bar wrappers" as a whole as a non-recyclable format, as mentioned in "film-non-plastic bags." This specific language can inadvertently hinder innovation in material development. There are candy bar wrapper materials and formats that could fit into other categories, such as paper-based or certified compostable materials.

5. Need to distinguish recyclability definitions for “truth in labelling” vs. covered materials

We would like caution against using the same definition of recyclability to be used for “truth in labelling” (SB 343) and for materials covered under EPR (SB 54). While the definition for SB 343 might want to reflect an accurate representation of today’s system, it is important the recyclability definition for SB 54 be focused on a reasonable assessment of potential recyclability. It is fair to SB 54 to require more than purely “technically recyclable” according to theoretical standards, but we would encourage a recyclability evaluation that would lead to creating a pathway for recovering more material types and higher volumes. Some materials are not sufficiently recovered today due to lack of planning and funding. SB 54’s EPR program should provide the structure and financial support to look beyond what is being recycled today. We encourage separate recyclability requirements for SB 54 that would allow for growth and innovation for California’s recycling program.

At Mars, we remain committed to working with CalRecycle and other relevant stakeholders to ensure that SB 343 is implemented in an effective and feasible manner. We appreciate the opportunity to comment on this important report and respectfully request that the changes laid out above be incorporated into final implementation plans for SB 343. Please do not hesitate to reach out to [POINT OF CONTACT] with any questions you may have. Thank you.
Sincerely,
Cori A. Herbig
US State and Local Public Policy Director
Mars, Inc.

Comment 102:
Name: Molly Blessing
Date received: 4/2/2024
Source: Email (mblessing@thehcpa.org)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here..
Comment: Dear CalRecycle SB 343 Implementation Team, Please find attached comments from the Household & Commercial Products Association on the SB 343 Preliminary Findings Report. Thank you for the opportunity to provide comment. Please feel free to reach out if you have any questions or would like to discuss.
All the best,
Molly R. Blessing
Vice President, Sustainability & Product Stewardship
Air Care Products Division Staff Executive
Household & Commercial Products Association
1625 Eye Street NW, Suite 700 | Washington, DC 20006

Attachment text: April 2, 2024
Senate Bill 343 Implementation Team
California Department of Resources Recycling and Recovery

1001 I Street
Sacramento, CA 95814

Subject: HCPA Comments on SB 343 Preliminary Findings

The Household & Commercial Products Association (HCPA)[1] appreciates the opportunity to provide input on the preliminary findings2 of the material characterization study (MCS) required by California Senate Bill 3433 (SB 343). We are committed to providing the consumers and workers who use our member company products with information about the product and its packaging that is accurate, credible, accessible, and usable, including whether and how to recycle the package.

In partnership with the Can Manufacturers Institute and with the support of companies across the aerosol value chain, HCPA launched the U.S. Aerosol Recycling Initiative in May 2022, one of the goals of which is appropriate recyclability labeling for aerosol cans. We have dedicated significant resources to increasing member engagement with and raising awareness of third-party certifications and organizations that advance product safety and sustainability, including those that consider or focus on recyclability.4

HCPA shares California's goal of accurate labels on recyclable materials. We look forward to working with the California Department of Resources Recycling and Recovery (CalRecycle) on implementation of SB 343, including refinement of the MCS preliminary findings, to achieve meaningful outcomes that move California forward on recycling.

Background

HCPA represents approximately 230 member companies engaged in the manufacture, formulation, packaging, distribution, and sale of products for household, commercial, institutional, and industrial use. HCPA members are continuously working to improve products and packaging in line with the principles of a circular economy to decrease waste and enable economic growth without greater resource use. Companies utilize several different materials for packing and shipping their products to ensure that products arrive undamaged, uncontaminated, safe for use, meet user expectations, have a lower environmental footprint, and generally enhance the quality of life of the consumers and workers who depend on these products daily.

HCPA has many members who market and sell products into California or otherwise have a presence in the state and are committed to ensuring that Californians have access to high-quality products with reduced environmental impacts.

In addition to representing various categories of household and commercial products (regardless of packaging), HCPA represents products packaged in the aerosol delivery form. The aerosol delivery form is used to dispense a wide range of products, including but not limited to adhesives, air fresheners, antiperspirant, asthma inhalers, body spray, cleaners, degreasers, deodorant, disinfectants, dry shampoo, hair spray, insect repellant, insecticides, lubricants, paints, pan sprays, sealant, shaving creams and gels, sunscreen, and whipped cream. HCPA has represented the U.S. aerosol products

industry since 1950 through its Aerosol Products Division, which includes companies that manufacture, formulate, supply, market, and recycle a variety of products packaged in an aerosol form.

Summary

HCPA is concerned that the SB 343 MCS preliminary findings report does not provide sufficient clarity to businesses on how to avoid making a deceptive “recyclable” claim in California. First, even within California, there is a lack of harmonization. The material type and form (MTF) categories used in the implementation of SB 343 are not the same as those used in the implementation of Senate Bill 54 (SB 54), the Plastic Pollution Prevention and Packaging Producer Responsibility Act of 2022.5 That is, the requirements for what can and cannot be labeled as recyclable do not necessarily match up with the requirements for what must be collected for recycling. Second, some of the conclusions CalRecycle drew in the preliminary findings report, particularly for steel packaging, do not appear to be reflective of the state of recycling in California. Third, the preliminary findings report does not include information on all of the statewide recyclability criteria in SB 343, meaning it does not provide a clear and complete picture of whether different MTFs can carry a “recyclable” claim. For example, no information is given on whether MTFs that are collected curbside and sorted for recycling are then sent to and reclaimed at a facility that meets the requirements of SB 343. The report also does not include any information on MTFs not collected through a curbside collection program. Recyclability is understood in different ways by stakeholders. To prevent deceptive claims, it is essential that CalRecycle update the SB 343 MCS preliminary findings report to include clear information on whether an MTF meets all statewide recyclability criteria and/or a way to validate the criteria that reflects marketplace realities, as well as align the SB 343 MCS with the material categories in SB 54.

A lack of clear communication and harmonization, both within California and nationally, will cause confusion for both consumers and industry. This will limit education and labeling about what is recyclable to only a few materials that fulfill narrow requirements against a patchwork of mandates and incentivizes companies to remove the “recyclable” label from many products, even ones that can and should be recycled, in order to lower their risk of legal or regulatory scrutiny. The likely result would be for consumers to discontinue recycling the product and start to view the product as non-recyclable, a trend that, once begun, is difficult to reverse. This is particularly problematic when considered alongside the laudable goals of SB 54, which include improving California’s recycling system, increasing recycling rates of covered material, and incentivizing design of new, more circular packaging. Implementation of SB 343 has the potential to support these goals by better informing product users of recyclability or to hurt them through minimizing or providing potentially conflicting messaging on product recyclability. HCPA urges CalRecycle to consider our comments and make significant updates to the SB 343 MCS preliminary findings report so that SB 343 improves, rather than detracts from, consumer understanding of what is recyclable.

1. Lack of harmonization with SB 54

SB 343's goals – to ensure that claims related to the recyclability of a product or packaging are truthful and that consumers receive accurate and useful information related to how to properly handle the end of life of a product or packaging – clearly complement those of SB 54, the act establishing a transformative extended producer responsibility (EPR) program in California. Like SB 343, SB 54 includes a requirement for CalRecycle to publish a list of what is and is not considered recyclable in California. The list published pursuant to SB 54 will be used to determine which items must be collected for recycling in California and the list published pursuant to SB 343 will be used to determine which items can carry the recycling symbol or other "recyclable" claim. Presumably, items that can carry a "recyclable" claim should generally be the same as those collected for recycling in California.

Given the direct relationship between the two, it is unclear to HCPA why CalRecycle elected to use two different categorizations of materials for the two lists. This adds significant confusion, as a company's packaging could be included in different categories with different data points used to evaluate it depending on which list is being looked at. For example, aluminum aerosols appear to be encompassed within the non-CRV aluminum cans and lids category in the draft SB 343 MCS, but are their own category with aerosol-specific collection and sorting numbers in the draft SB 54 Covered Material Categories (CMC) list determinations. In fact, for metal overall, the draft SB 343 MCS includes only 10 categories while the draft SB 54 CMC list includes double that (20 total).6 HCPA believes such differences confuse stakeholders and detract from efforts to improve recycling in California. We recommend that CalRecycle fully align the MTF categories in the SB 343 MCS with those in the SB 54 CMC list.

2. Report conclusions not fully reflective of steel recycling in California

HCPA questions the basis of CalRecycle's conclusion that less than 60% of California's population is serviced by recycling programs that sort steel packaging for recycling. In comparison, CalRecycle concluded that over 80% of California's population is serviced by recycling programs that sort various forms of aluminum for recycling and over 70% is serviced by recycling programs that sort mixed non-ferrous metal for recycling.7 Further, CalRecycle concluded that over 90% of California's population has access to collection for both aluminum and steel cans and lids, including aerosol cans.8 This would seem to indicate, then, that the large majority of facilities are receiving aluminum and steel cans, sorting out aluminum from steel for recycling, and throwing out the steel stream instead of processing it or sending it on for recycling. Not only does this not make economic sense, but this view does not appear to be borne out by CalRecycle's own data.

Through a public records request, HCPA received and was able to review data and methodology used by CalRecycle to develop the SB 343 MCS preliminary findings report. Based on the information provided, HCPA believes that CalRecycle did not consider important pathways for recycling steel packaging. HCPA believes that other metal outflows, such as metal scrap, should be considered along with mixed ferrous metal as a sortation stream for steel packaging and recommends that CalRecycle reconstruct the analysis with this in mind.

According to the methodology in the public records request, CalRecycle's surveys of high-volume permitted Large Volume Transfer Processors (LVTPs) produced activity details of 37 facilities (37 from phone survey; 24 including onsite survey). CalRecycle combined all survey data to produce a table of facility coverage by county,9 and a table of defined streams/outflows produced by each facility.10 This table shows that the metal outflows from facilities vary widely, with some reporting having only a metal scrap outflow and others having various combinations of a metal scrap, mixed ferrous metal, mixed nonferrous metal, and/or other metal outflows.

The provided phone11 and in-person12 survey data indicated that most facilities are regularly aggregating metal for sale or transfer. Facility operators appeared to use scrap metal, tin cans, and mixed ferrous somewhat interchangeably when referencing how steel cans are sorted for further processing and/or sale. For example, the facility with ID #6 in the phone survey said that aluminum metal is separated into various aluminum streams and all other metal goes to scrap. The facility with ID #7 said metal goes into a "metal box" and referred to "aluminum and metal cans," suggesting that metal is used interchangeably with non-aluminum.

Other facilities referred to "tin" and referenced magnet sorters used to sort ferrous metals, or "tin and mixed stuff" (ex. facility with ID #17), which can be assumed to refer to tin-plated steel cans. Some facilities described sending generic metal streams (ex. facility with ID #23) or scrap metal with tin and aluminum aggregated separately (ex. facility with ID #9) on for further recycling. 13 Despite the terms scrap metal, tin cans, and mixed ferrous all being used to refer to steel cans depending on the LVTP operator CalRecycle spoke with, CalRecycle moved forward in a way that seems to have excluded key recycling streams for steel cans from consideration.

In the follow-up in-person surveys that CalRecycle conducted with select LVTPs, CalRecycle presented the LVTPs with a list of materials and asked which of those on the list the LVTP prepared for sale/transfer after processing onsite. This is in contrast to the phone survey, which asked generically about "metal," "glass," and so forth and left it to LVTPs to get more specific according to what was done at their facility.14 The preset list used in the in-person survey only included aluminum cans, other nonferrous metal, and ferrous metal, with no specific mention of scrap metal or additional metal outflow streams.[15] This naturally led to respondents not referring to other metal outflow streams in their survey answers.

Separately from the phone survey information and corresponding spreadsheet used to determine which LVTPs had which outflows, CalRecycle provided data from on-site hand and visual sorting of outflows at ten facilities, used to assess which outflows contained which MTFs. The hand and visual sort data categorize materials into outflows that do not clearly match up with the outflows referred to in the in- person survey or described by LVTPs in the phone survey. For metals, the outflow categories used for the hand sort include "mixed metal – small ferrous," "other aluminum," "steel cans," "mixed metal – nonferrous," "mixed metal – large," and "mixed metal – small."16 The metal outflow categories used for the visual sort include "metal – aluminum beverage cans – CRV," "copper," "ferrous metal," ""copper/brass/insulated wire," and "metal scrap."17

While “steel cans,” for example, is used as a category for the hand sort, it does not appear as a category in the outflow spreadsheet summarizing survey results18 and was generally not referenced in survey responses,19,20 making it unclear how the identified contents of the hand sort outflows translate to a determination of which LVTPs sort which MTFs. This information is important to understand because it feeds into the determination of which LVTP outflows CalRecycle considered when calculating the percentage of counties and population serviced by LVTPs that sort a given MTF for recycling. HCPA requests that CalRecycle clarify how the hand and visual sort categories were decided upon and how they relate to the categories in the outflow spreadsheet of survey responses and in-person survey questionnaire.

HCPA questions whether all relevant post-sort outflows at each of the 10 facilities visited were included in sampling and sorting. For example, the facility with ID #16 in the phone survey was one of the facilities visited for outflow sampling and sorting. In phone and in-person survey responses, the facility described sending aluminum and bimetal (tin-plated steel) for recycling, including citing specific end markets. 21,22 But in the hand sort and visual sort data, the only metal outflows recorded as sampled for this facility were “mixed metal – large” (hand sort) and “metal – aluminum beverage cans – CRV” (visual sort) which does not include non- CRV aluminum or steel cans. HCPA is confused as to which outflow the facility is sorting bimetal/tin-plated steel cans into if they are indeed being recycled as the facility said and is concerned that important outflows were not included in sampling. HCPA requests that CalRecycle clarify how post-sort outflows at each of the 10 facilities were selected for sampling and whether there were outflows at the facilities that were not sampled.

More broadly, HCPA questions whether the facilities and outflows sampled are representative of the breadth of facilities identified as LVTPEs and interviewed in the phone survey. For example, only one of the facilities that referred to sorting metal to a scrap metal outflow in the phone survey appears to have been included in sampling (the facility with ID #14 in the phone survey). This facility’s metal outflows as described in the hand and visual sort sampling included “other aluminum,” “mixed metal – small ferrous,” “metal – aluminum beverage cans – CRV,” and “metal scrap.” Tin-plated steel cans were the primary component of “mixed metal – small ferrous” but also consisted of five percent of the “metal scrap” outflow by visual area. While five percent may not sound like a lot, metal scrap outflows often contain bulkier items along with cans. The bulky items can take up space such that cans may be a small percentage of the metal scrap outflow even if a significant number of cans being collected and sorted for recycling are going into the metal scrap outflow.

HCPA believes additional information is needed to better understand the outflows that steel cans end up in and, more generally, ensure that the conclusions CalRecycle draws regarding MTFs present in outflows reflect the breadth of processes used at LVTPs in California. The magnetic property of steel ensures that it is easily sortable for recycling from other materials, and due to its economic value, it is difficult to understand how steel is not recyclable according to the MCS. At a minimum, HCPA recommends CalRecycle conduct more in-depth interviews with all LVTPs included in the study. CalRecycle should particularly focus on items such as steel cans which may be sorted

into an outflow with larger items that can cause weight or visual area percent of outflow to be a poor measure of whether the outflow is truly a defined stream for an MTF.

3. Missing information on key criteria for recyclability

Items Collected Via Curbside Collection Programs

HCPA is concerned that the preliminary findings report does not include information on all of the statewide recyclability criteria in SB 343 and thus does not provide a clear and complete picture of whether different types of products and packaging and associated MTFs can carry a “recyclable” claim. SB 343 requires that MTFs which are collected as part of statewide recycling programs meet collection, sorting, and end market requirements to carry a “recyclable” claim, along with product and packaging-specific design and chemical component requirements. In the preliminary findings report, CalRecycle only provides information on collection and sorting access. CalRecycle provides no information on end market destination or whether the end market meets the requirement in the law for the defined stream to be sent to a reclaiming facility consistent with the requirements of the Basel Convention.

Manufacturers cannot readily get information about end markets for MTFs included in statewide recycling programs without assistance from the state. The LVTPs managing MTFs for recycling are under no obligation to share information on end markets with companies and may choose not to when asked because they consider this to be confidential business information. Further, even if companies are able to get end market information from LVTPs, the end markets themselves have no obligation to share information about their processes with companies. Should companies somehow manage to get sufficient information from both LVTPs and end markets, CalRecycle provides no guidance on how to evaluate this information for consistency with the requirements of the Basel Convention.

HCPA is concerned that without information on MTF compliance with the end market requirement in SB 343, companies will lack regulatory certainty, hurting their ability to do business in the state and adding to consumer confusion about what is recyclable. HCPA requests that CalRecycle update the preliminary findings report to include an assessment of end markets for MTFs collected and sorted at LVTPs and/or information on end markets along with targeted guidance on how to assess them for SB 343 requirements.

Items Collected Via Non-Curbside Collection Programs

SB 343 also includes separate criteria for MTFs that are collected via non- curbside collection programs. Products and packaging collected via non-curbside collection programs must meet recovery rate targets and demonstrate “sufficient commercial value” to be marketed for recycling and transported to a facility that will sort and aggregate it into defined streams by MTF. HCPA is concerned about the lack of information provided on whether MTFs meet these criteria.

Though recovery rate is not defined in the law, it seems that to determine a recovery rate, companies would need to know the total amount of product or packaging covered by the program that is sold into California as well as the amount recovered by a specific program. The former is information that presumably would be collected as part of the implementation of SB 54 but not something an individual company would have access to. The latter is information that companies may not have the authority to require a program to provide. Further, in the absence of direction from CalRecycle, different programs may use different methodologies when determining the recovery rate, leading to inconsistent determinations on the same MTF. How to determine whether a collected MTF has "sufficient commercial value" is even more unclear. Programs generally have no obligation to provide information on specific MTF destinations to individual companies and even if the information is received, CalRecycle has provided no guidance on the agency's interpretation of "sufficient commercial value."

HCPA is concerned that for MTFs primarily collected via drop-off, without information on MTF compliance with the non-curbside collection requirements in SB 343, companies will lack regulatory certainty, hurting their ability to do business in the state and adding to consumer confusion about what is recyclable. HCPA requests that CalRecycle update the preliminary findings report to include an assessment of non-curbside collection programs for MTFs primarily collected through those means and/or information on non-curbside collection programs along with targeted guidance on how to assess them for SB 343 requirements.

Conclusion

HCPA thanks CalRecycle for the opportunity to provide input on the preliminary findings of the SB 343 MCS. We look forward to working with CalRecycle on the implementation of SB 343 to protect consumers, align with state and federal environmental policy, and achieve meaningful outcomes that move California forward on recycling. We invite any questions about this submission and look forward to CalRecycle's response.
Sincerely,
Molly R. Blessing
Vice President, Sustainability & Product Stewardship

Footnotes:
1 The HCPA is the premier trade association representing companies that manufacture and sell $180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.
2 https://www2.calrecycle.ca.gov/Publications/Details/1729
3 https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB343
4 Including, for example, Safer Choice, Green Seal, Cradle to Cradle, How2Recycle, and The Recycling Partnership.
5. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB54
6. https://calrecycle.ca.gov/packaging/packaging-epr/cmclist/
7. Table G1 of the SB 343 MCS Preliminary Findings Report.

8. Table 1 of the SB 343 MCS Preliminary Findings Report.
9. Public Records Request file “Survey_Juris_1002.csv”
10. Public Records Request file “Survey_Outflows_091823_clean_rev0927.csv”
11. Public Records Request file “SB 343 Phone Survey8-7-23.xlsx”
12. Public Records Request file “343 In Person Survey_Export02222024.xlsx”
13. Public Records Request file “SB 343 Phone Survey8-7-23.xlsx”
14. Public Records Request file “SB 343 Phone Survey.pdf”
15. Public Records Request file “343 In Person Survey – Data Entry.pdf”
16. Public Records Request file “SB343 MCS Hand Sort Data 2023 S01.xlsx”
17. Public Records Request file “SB343 MCS Visual Characterization Data 2023 S01.xlsx”
18. Public Records Request file “Survey_Outflows_091823_clean_rev0927.csv”
19. Public Records Request file “SB 343 Phone Survey8-7-23.xlsx”
20. Public Records Request file “343 In Person Survey_Export02222024.xlsx”
21. Public Records Request file “SB 343 Phone Survey8-7-23.xlsx”
22. Public Records Request file “343 In Person Survey_Export02222024.xlsx”

Comment 103:
Name: Gregory Melkonian
Date received: 4/2/2024
Source: Email (gmelkonian@serlinhaley.com)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Good afternoon, Attached is a letter of comments from AMERIPEN regarding the draft SB 343 Preliminary Findings Report. Please let me know if you have any questions.
Thank you for your consideration,
Gregory Melkonian
Regulatory & Government Affairs Associate
Serlin Haley LLP
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Attachment Text: April 2, 2024
Submitted via email: wastechar@calrecycle.ca.gov
Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025
RE: SB 343 Material Characterization Study Preliminary Findings Report – Comments

Dear Department of Resources Recycling and Recovery,

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity provided by the California Department of Resources Recycling and Recovery (“Department” or “CalRecycle”) to submit written comments on the draft SB

343 Preliminary Findings Report (“Report.”) AMERIPEN respectfully submits these written comments for CalRecycle’s consideration when developing the final Report.

AMERIPEN is a trade association dedicated to improving packaging and the environment. We are the only material-inclusive packaging association in the United States representing the entire packaging supply chain. This includes materials suppliers, packaging producers, consumer packaged goods companies, retailers, and end-of-life materials managers. Our membership also includes a robust array of industry, material, and product-specific trade associations who are essential to the AMERIPEN fabric. We focus on science and data to define and support our public policy positions, and our advocacy and policy engagement is based on rigorous research rooted in our commitment to achieve sustainable packaging policies. We have several member companies with a significant presence in California, and many more who import packaging materials and products into the state. The packaging industry in California supports nearly 156,000 jobs and accounts for $49 billion in total economic output.

AMERIPEN supports policy solutions, including packaging producer responsibility, that are:

• Results Based: Designed to achieve the recycling and recovery results needed to create a circular economy.

• Effective and Efficient: Focused on best practices and solutions that spur positive behaviors, increase packaging recovery, recapture material values and limit administrative costs.

• Equitable and Fair: Focused on all material types and funded by shared cost allocations that are scaled to make the system work and perceived as fair among all contributors and stakeholders.

The below written comments and clarifying questions from AMERIPEN, ordered by major topics, speak to the contents of the draft Report released by the Department on December 28, 2023.

Film and Flexible Materials

The characterization study conducted as part of the preliminary Report does not address alternative collection options, such as retail drop off. While this may be because statute directs the study to focus on operations by solid waste facilities, it unfortunately leaves a significant gap in understanding the state’s current recycling systems. This is especially true in the case of films and flexible plastic packaging materials, which have a robust network of non-curbside collection sites.

Films and flexible materials can serve a critical role in packaging by enabling lightweighting and reducing carbon emissions. Flexible packaging comprises a major segment of the United States packaging industry, second only to corrugated paper. (1)

It should be noted that the absence of collection at the curbside or by a waste hauler does not equate to the absence of any collection, nor does the absence of sortation at a large volume transfer or processing facility (LVTP) equate to the absence of sortation (or recycling) anywhere. The draft Report's lack of coverage of drop-off and other alternative collection options does not create an accurate representation of material recovery rates for film and flexible packaging in California. The fact that retail drop-off is the predominant means of collection for these materials underscores this fact: a 2022 study determined that 87.6% of Californians live within three miles of a retail drop off site for plastic films and 64.1% live within a five-minute drive of such a site.(2)

Producer initiatives and the state's Plastic Pollution Prevention and Packaging Producer Responsibility Act ("SB 54") will drive increased investment into collection and recycling infrastructure, complementing the need for alternative collection for films and flexible materials. There are multiple efforts in the nonprofit and private sectors to coordinate and invest in the development of circularity of the materials, such as the Film and Flex Recycling Coalition and the Flexible Film Recycling Alliance. Furthermore, recent data es mates a reclama on rate of 85-90% for collected film (3), and end markets for these materials already exist and are expanding.4

The implications of accurate reporting of materials collection are significant: if SB 343 is implemented in a way that prevents communication to consumers that films and flexible materials can be recycled through drop off, it will hamper the growth in recycling throughout California and will risk increased liter and more – not less – packaging going to landfill. This also opens the door to inconsistency and disagreement for labeling across state lines, as well as potential legal ramifications.

SB 343 does provide pathways for materials to qualify as "recyclable" even if collected outside of a curbside recycling program, including by mee ng certain thresholds for recycling rates or collection. While participants in alternative programs for films and flexible materials will have data to quantify their nature, CalRecycle is in a unique position to collect and disseminate further insight and analysis into such materials. Any additional information available to the Department should supplement the current scope of the Report.

AMERIPEN urges CalRecycle to include a sec on within the Report acknowledging and detailing access to alternative collection options for films and flexible materials to help identify where those material types fall within the SB 343 criteria. Should the Department not include this information, AMERIPEN recommends at the very least that that the Report: (1) acknowledge that the tables show the minimum collection and sortation rates and do not specifically account for alternative collection options; and (2) explain the rationale for not including this additional information.

Mixed Material Issues

There is uncertainty among producers as to how mixed material packaging will be treated under SB 343. Public Resources Code sec on 42355.51(b)(3)(B) does provide

guidance on labeling packaging that has multiple material types and that has some components that are recyclable and some that are not recyclable. However, it is unclear how this provision would be applied to mixed material packaging where the materials are difficult to separate or are not designed for separation (e.g., a paperboard container with an interior lining of a different material).

Additionally, AMERIPEN requests that CalRecycle create an additional category within the Mixed Category titled "Mul -Material Laminate Single-Use Paperboard Rigids Containers" to capture paper-based, non-aseptic, multi-laminate containers. These should be set aside from the more miscellaneous X05 and X11 MTFs, as they are likely to be more recyclable than other items that fall in those categories. CalRecycle should then rerun its assessment for this new category to confirm this material does sort and go with the paper bales.

Fiber Materials Issues

Like the mixed material categorization issues referenced above, there are potential discrepancies or issues in Table D1 regarding fiber materials. MTF F01, “Uncoated Corrugated Cardboard/ Old

Corrugated Containers (OCC)” “may include clean molded fiber.” However, “clean molded fiber” has its own MTF (F08), which Table 1 shows as not mee ng the 60% collection threshold. AMERIPEN recommends that packaging that is coated on one side only and has passed one of the following paper recyclability standards remain classified as MTF F01 or F06 (rather than the more miscellaneous F12), which enables innovation without compromising recycling operations:

• Fibre Box Association (FBA) Voluntary Standard for Recyclable Wax Alternatives

• Confederation of European Paper Industries (CEPI) Recyclability Test Method

• Papiertechnische Stiftung (PTS) Recyclability Testing PTS-RH 021:2012

While the Report found that only 47% of the population has access to residential curbside recycling collection for MTF F08 (“Clean Molded Paper Fiber”) (according to Table 1), Table 2 demonstrates that every county surveyed accepts this material for sorting, representing 89% percent of statewide population with access to sorting this MTF (as shown in Table G1). This gap is concerning given the innovation efforts being made to replace some more difficult-to-recycle materials with more sustainable materials like molded fiber, offering customers an all-paper- based package but not allowing producers to communicate the recyclability of the molded pulp components despite the significant percentage of the population with access to sortation. This example demonstrates how critical it is to properly categorize materials and quantify their collection and sortation, and why producers are relying on CalRecycle to make the final Report as accurate as possible.

Separately, Table A4 lists “Egg Cartons (Fiber)” as an “Associated jurisdiction collection material category” for “Clean Molded Paper Fiber.” However, in Table D1, MTF F08 (“Clean Molded Paper Fiber”) is defined as “clean molded paper fiber packaging for shipping or other non-food uses,” and its examples do not include egg cartons. On page 53, the Report states that Table D1 says that “connected to the jurisdiction survey accepted materials list (Appendix 1),” which includes Table A4. Thus, there appears to be an inconsistency in the Department’s characterization of egg cartons, and potentially other materials. AMERIPEN encourages the Department to reexamine and clarify these areas.

Treatment of LDPE

According to Table 1, the four low-density polyethylene (LDPE) MTFs were all found to be accepted for recycling for over 60% of California’s population, with three of the four of categories reporting a 94% acceptance rate. However, no LDPE category is listed in Table 2 (regarding sortation), and the Covered Material Category list published in December 2023 indicated that no category of LDPE is “potentially recyclable.” LDPE is omitted from Table 2 presumably because, according to Table F1 in Appendix 6, all four LDPE categories were marked “Yes” for the following columns:

• “Rare Material (Rarely Observed in Study),” which “means that in total fewer than 10 pounds of this material were observed across all samples in the study, including defined streams and residual destined for disposal.”

• “Low Recovery Rate (Rare Outside Residual),” which “means that this material was more common in residual destined for disposal than in any defined stream.”

However, just because a material is rare does not mean it is never sorted or is incapable of being sorted. Moreover, this material characterization survey is the first and (so far) only one of its kind in California. Sampling was limited to within just one month (August 2023). Therefore, it may not be representative of the material flowing through the recycling system year-round, let alone across multiple years. As such, AMERPEN believes it is not justified to indicate LDPE is not “potentially recyclable,” as was done on the Covered Material Category List under proposed SB 54 implementation. AMERIPEN encourages CalRecycle to explore options to conduct more in- depth analysis of how LDPE and other “rare” materials are managed. If CalRecycle does not intend to do so and is not comfortable relying on its limited data, it should instead state “Undetermined” instead of a definitive “No” when marking if a material is “Potentially Recyclable.”

Intersection between SB 343 and SB 54

The results of the final Report for SB 343 will have a direct impact on what is to be considered recyclable under SB 54, and therefore will greatly influence the success of California’s circular economy efforts for packaging. The methodology CalRecycle uses to characterize materials will determine whether a material may be labeled “recyclable” or “not recyclable” per SB 343, which will then determine whether it might be restricted

in California in some way beginning in 2032 under SB 54. Given the differences in the Report's MTFs and the proposed Covered Material Category (CMC) List under SB 54 implementation, producers urgently need assistance navigating where their products fall within the intersection of the two programs.

For example, in the draft Report, MTF F08 ("Clean Molded Paper Fiber") did not meet the collection threshold to be considered "recyclable" under SB 343. However, a potentially overlapping category, "Molded Fiber - All Forms of Packaging w/o plastic component" (PF3N), was determined in the December 2023 "SB 54 Report to the Legislature" to be "Potentially Recyclable." This is the type of inconsistency that can be identified and addressed if the two lists are mapped together.

AMERIPEN therefore requests a visual representation of how SB 343 material characterization categories translate into SB 54 CMCs (e.g., a "crosswalk"). As a general principle, AMERIPEN also asks the Department to continue working to harmonize the two lists as much as possible.

Additionally, it is unclear how small materials were measured. Specifically, there are various MTFs (e.g., "Remainder/Composite Metal," "Fines and Residuals," and "Other Mixed Paper") defined in Appendix 4 as containing fragments or items of their respective base material "smaller than two inches." However, the "Covered Material Category (CMC) Supplementary Material" published by the Department in December 2023 specifies that SB 54 CMC list contains CMCs for "small items, which are items with no side greater than 2 inches." The SB 54 CMC list is clear that an item may only be categorized in a small CMC if no side exceeds two inches, but the SB 343 MTFs do not have similar specificity about how the two-inch standard was applied. AMERIPEN seeks clarification from the Department as to what "smaller than two inches" means and for consistency requests the categorization be aligned with the approach for the SB 54 CMCs.

Finally, the draft Report cites Public Resources Code sec on 42355.51(d)(2) for the criteria used to determine whether packaging may be considered recyclable, but it does not consider the complete set of requirements in that subsection. Specifically, the draft Report does not contain an evaluation of the recyclability requirement in subsection 42355.51(d)(2)(B)(i) that "defined streams [from LVTPs be] sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Conven on." This omission undermines the usefulness of the Report: businesses that need to comply with SB 343 have no independent way to determine whether the material types and forms meet this Basel Conven on criterion. Without including information on consistency with the requirements of the Basel Conven on, the Report does not fully facilitate compliance.

AMERIPEN is deeply concerned with the impracticality of obligating producers to determine the destination of material they produce a er their use by consumers and handling by LVTPs. SB 54 establishes a comprehensive framework for ensuring

recycled materials reach “responsible end markets,” which is a more thoughtful and practical approach than what is contained in SB 343. SB 54 will utilize producer resources to fund efforts that ensure the protection of Californians and the environment, achieving a similar end but with a more effective approach that does not jeopardize the ability to promote recycling.

Given these concerns, AMERIPEN requests CalRecycle to include an analysis of how materials are complying with all the requirements sec on 42355.51(d)(2)(B)(i), including in relation to the Basel Conven on. Consistent with the purpose of the Report, such a determination will permit businesses to rely on the results of the final report in order to comply with SB 343.

Use of Authority and Discretion

AMERIPEN strongly encourages CalRecycle to take all actions within its authority to ensure that materials appropriately qualify as “recyclable.” This is especially important considering the current and forthcoming investments in recycling infrastructure, to avoid needlessly stranding

assets and cu ng off consumers from useful and recyclable materials.

Specifically, AMERIPEN requests that CalRecycle use its authority under Public Resources Code sec on 42355.51(d)(2)(B)(ii) to modify the sortation requirement in Public Resources Code sec on 42355.51(d)(2)(B)(i) to encompass all transfer or processing facilities (not just large volume transfer or processing facilities). This will give a fuller picture of where materials are sorted and may account for gaps in the final Report for counties that were not included in the preliminary report. Accordingly, AMERIPEN requests that the Report be revised to additionally include sortation results when measuring all transfer or processing facilities.

AMERIPEN also requests CalRecycle to use its authority under Public Resources Code sec on 42355.51 (d)(1)(B)(iii) to update the material characterization study regularly as par es share more information. At least every three years, if not more frequently, may be appropriate. This will ensure that producers and the public are fully informed with the latest data for the recyclability of packaging and products.

AMERIPEN also asks the Department to consider informally identifying MTFs that may be future candidates for “trending” materials under SB 54, pursuant to Public Resources Code sec on 42061(a)(3)(B). This will help the SB 54 Producer Responsibility Organization (PRO) and producers priori ze efforts and investments ahead of the 2027 authorization to identify such materials, without creating any legal or financial obligation for the state.

Study Approach Issues

It is important that CalRecycle considers that packaging materials may be accepted implicitly, rather than explicitly in written and visual material collection lists. Recycling

collection programs may still accept a material for collection implicitly even if it silent about in its instructions for handling it if the program does not prohibit its collection. For example, the recycling guidance for the City of Albany5 in California lists “Cans, foil, & scrap metal” as recyclable, but the Jurisdiction Acceptance spreadsheet leaves blanks in the Albany row for materials like aluminum cans, trays, and pans. Aluminum cans presumably match with Albany’s listing of “cans,” and other materials could fit under the scope of “scrap metal” that Albany accepts. This is just a limited example of why more in-depth examination of the findings and dialogue with recycling collectors is needed across all jurisdictions to determine the collection status of specific items.

AMERIPEN strongly recommends that CalRecycle consider whether a material may be implicitly accepted and, if the Department already did this, then treat the material as fully accepted. AMERIPEN seeks to know whether the Department factored in implicit acceptance when

determining the collection rates. If so, what was the process for determining when something is

implicitly accepted? If not, what was the Department’s justification for not doing so?

There also is a large number of blank cells in the Jurisdiction Acceptance spreadsheet in the preliminary Report, which could be addressed by a more extensive review of programs’ collection guidance (including their online recycling tools). That would provide a more accurate representation of collection in California. AMERIPEN recommends that CalRecycle review its Jurisdiction Acceptance data manually to ensure that it is reflective of what recycling collection programs actually accept for collection. Related, not all “associated jurisdiction collection material categories” were included in the Jurisdiction Acceptance spreadsheet. For example, “paper cups” are not included as a column despite being one of the categories under the “Composite Food Service Paper & Packaging” MTF (F10) in Table A4. To further improve the analysis, AMERIPEN recommends that the Jurisdiction Acceptance spreadsheet be revised to examine every type of associated jurisdiction collection material categories listed.

Page 4 of the preliminary Report indicates that materials collection information was not obtained for Trinity County and Tulelake City. While those jurisdictions may only comprise less than 1% of the state population, CalRecycle should make a dedicated effort to work with local personnel and officials directly to establish their respective materials lists and better inform the final Report.

Pages 5 and 6 of the draft Report states that, “The [LVTP] candidate facility list was developed from self-reported data in [the Recycling and Disposal Reporting System (RDRS)]. If data was missing or mis-reported in RDRS, some high-volume LVTP facilities may be excluded from this candidate list.” This approach creates an obvious risk of underreporting sortation, where LVTPs that may in fact collect materials are being omitted without further examination or analysis of the underlying data. The survey did not account for facilities that serve recycling programs in counties comprising 11.5%

of the state's population, and that missing segment should be further studied, as the applicable data can make the difference for a MTF to be "recyclable." Moreover, each additional "recycling program" that can be accounted for will have a significant impact on the sortation figure for a given MTF. AMERIPEN requests that, for LVTPs in these situations, CalRecycle conduct more in-depth investigations and surveys to obtain more accurate and complete data.

The draft Report's description of the Department's approach to conducting facility surveys raises questions and uncertainty about whether it was robust enough. For example, on Page 6, the Report states, without demonstrating, that, "Facili es were selected to maximize representative sampling by geography and population density." Rerunning the analysis with a different set of sampled facilities and at a different me of year may produce very different results, so it is crucial that the samples are truly representative. AMERIPEN seeks to know whether CalRecycle determined sampling just ten facilities and doing so within one month's me was enough to

generate a "representative sample." As mentioned in the "Treatment of LDPE" sec on above, sampling for than one month may not give a representative picture of the annual flow of materials. If the Department did not make such a determination, AMERIPEN urges the Department to conduct a statistical analysis and reconstruct its survey, if merited, to be as robust and representative as possible. For example, just two facilities were sampled across the Los Angeles and San Diego metropolitan areas; how robust is that?

AMERIPEN also asks the Department whether it examined if any out-of-state LVTPs serve in-state recycling programs, especially for the population not accounted for in the survey. The requirement in Public Resources Code sec on 42355.51(d)(2)(B)(ii) is not restricted by state lines, so AMERIPEN recommends the Department ensure the scope of its survey is as broad as possible to create the most accurate and robust results.

The recyclability criteria in Public Resources Code sec on 42355.51(d)(2) refer to "recycling programs" and "jurisdictions," but neither term is defined for that code sec on. In response to a question at the February 13, 2024, informational session, CalRecycle staff indicated that it treated counties as an analogue for recycling programs in the preliminary Report. AMERIPEN seeks the Department's guidance as to how producers should approach determining what these terms mean. For example, would a "recycling program" be limited to a county-level consideration, or could it include alternative collection programs such as retail drop off programs? AMERIPEN asks the Department to consider running a more extensive survey that reflects how many specific recycling programs (rather than counties) each LVTP serves.

AMERIPEN strives to offer a good-faith and proactive approach that integrates elements from other established packaging producer responsibility programs with hopes of developing a plan that will incentivize recycling growth and the beneficial impacts that come along with that in Maine. AMERIPEN continues to focus on strategies that

develop and/or strengthen policies to progress the “reduce, reuse, recycle” strategies, while at the same me, enhancing the value of packaging. Our members are driving innovation, designing better environmental performance to evolve the recycling infrastructure and to create a more circular economy for all packaging. In our efforts to reduce environmental impact by increasing the circularity of packaging, our members continue to recognize the value of collaboration and the importance of working across the packaging value chain.

AMERIPEN looks forward to the continued open dialogue with the Department and interested stakeholders while collectively balancing between the myriad of needs for packaging, recycling, and sound solutions to grow a more sustainable future, an effective circular economy, and systems that achieve positive environmental outcomes for everyone, which in the end, ultimately assists in the success of this program. We remain committed to supporting progressive, proactive,

and evidence-based strategies for sustainable packaging policies and programs.

As always, AMERIPEN thanks the Department for this opportunity to provide written comments regarding the preliminary findings of the Report and appreciates the Department staff’s me and assistance during the SB 343 implementation on process. Please feel free to contact me or Gregory Melkonian with Serlin Haley, LLP (GMelkonian@serlinhaley.com) with any questions on AMERIPEN’s positions.

Sincerely,

Dan Felton
Executive Director

Footnotes:
1 Diehlmann, Dani. “FPA: The State of the U.S. Flexible Packaging Industry.” Paper, Film & Foil Converter, March 11, 2024. https://www.pffc-online.com/print/18053-fpa-the-state-of-the-u-s-flexible-packaging-industry.
2 RRS. “GreenBlue/SPC California Regional Film & Bag Study - Final Report.” Sustainable Packaging Coalition, November 15, 2022. https://sustainablepackaging.org/wp-content/uploads/2022/03/UPDATED-2020-21-Centralized-Study-on-Availability-of-Recycling-SPC-3-2022.pdf.
3 Ibid.
4 Staub, Colin. “Major PE Film End User Predicts ‘strong Demand’ in 2024.” Plastics Recycling Update, February 28, 2024. https://resource-recycling.com/plastics/2024/02/28/major-pe-film-end-user-predicts-strong-demand-in-2024/.
5 https://www.albanyca.org/home/showpublisheddocument/42261/637025246268800000

Comment 104:
Name: Erin Hall

Date received: 4/2/2024
Source: Email (erin_hall@afandpa.org)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Good afternoon, On behalf of the American Forest & Paper Association, please find attached comments regarding the draft SB 343 Preliminary Findings Report.
Best regards,
ERIN HALL
Manager, Government Affairs
erin_hall@afandpa.org
(360)888-5532
AMERICAN FOREST & PAPER ASSOCIATION
1101 K Street, N.W., Suite 700
Washington, D.C. 20005

Attachment text: April 02, 2024
Attn: Dan Brown, Environmental Program Manager
Department of Resources Recycling and Recovery
CalRecycle
P.O. Box 4025
Sacramento, CA 95812-4025
RE: Comments related to the draft SB 343 Preliminary Findings Report

Dear Mr. Brown:
The American Forest & Paper Association (AF&PA) would like to offer comments on the draft SB 343 Preliminary Findings Report for the required characterization study of material types and forms that are collected, sorted, sold, or transferred by solid waste facility in California. Broadly, we have concerns about the collection categories, assumptions, data accuracy and providing for flexibility as industry standards evolve over time – more transparency is needed to establish confidence in the draft report conclusions.

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative — Better Practices, Better Planet 2030. The forest products industry accounts for approximately four percent of the total U.S. manufacturing GDP, manufactures nearly $300 billion in products annually and employs approximately 950,000 men and women. The industry meets a payroll of approximately $55 billion annually and is among the top 10 manufacturing sector employers in 43 states. In California, the industry employs more than 55,000 individuals in nearly 450 facilities.

Paper Recycling Works

The paper recycling rate has grown over the decades, and remains consistently high, meeting or exceeding 63 percent since 2009.1 In 2022, nearly 68 percent of paper consumed nationally was recovered for recycling. Technological innovations in product design and recycling processes are continuously allowing our industry to access and recycle more paper-based products.

Data from the U.S. Environmental Protection Agency (EPA) confirms the excellent record and environmental success story of paper recycling from municipal collection programs.2 Put another way, more paper by weight is recovered for recycling from municipal solid waste streams than plastic, glass, steel, and aluminum combined.

Robust investment in end market use for recovered paper is an essential pillar of the paper industry's success. Our industry has completed or announced nearly $7 billion in manufacturing investments through 2025 (2019-2025) that will use more than nine million tons of recovered fiber.

343 Comments & Concerns

AF&PA has concerns about the Material Type and Form Alignment Jurisdiction Collection Categories. Some of the groupings are inconsistent and do not make sense for how certain fiber materials are recycled. For example, the category "Uncoated Fiber-Based Food Service Ware" includes "Egg Cartons, Clean Pizza Boxes, Napkins, Towels, Tissues, Toilet Paper, Paper Plates, Paper Cups, To-Go/Take-Out Containers." To our knowledge, toilet paper is not collected for recycling, and it is confusing why clean pizza boxes would be grouped with these other products.

Following from the confusion about the Jurisdiction Collection Categories, it is not clear what the published acceptance rate for a given category is describing, whether it is acceptance of any one of the listed products, all of them, or an average of acceptance of the entire list. Thus, we request that CalRecycle share more detailed information about the method for determining jurisdiction acceptance. In our review of the data, some categories seem inconsistent with similar studies we have performed that purport to follow a similar methodology. AF&PA completed our latest Access to Recycling Study in 2021. Data from that study indicates that 80 percent of Californians have access to recycling collection for pizza boxes, while CalRecycle's draft report indicates that Jurisdiction Collection of "Uncoated FiberBased Food Service Ware" is only 44 percent. Additional transparency in the assumptions and data aggregation methods used to develop the Jurisdiction Collection rates is needed. CalRecycle should publish the entire underlying dataset to ensure accuracy in the data aggregation and consistency in the application of assumptions.

Corrugated pizza boxes that are free of food are widely accepted by AF&PA member company mills that accept OCC. We encourage communities to include pizza boxes that are free of food among the paperbased packaging items accepted in their residential recycling programs. A study completed in 2020 by AF&PA company member WestRock found that typical levels of grease and cheese found on postconsumer pizza boxes do not negatively impact remanufacturing.

In addition, the definition of Collection Categories should allow for flexibility and the possibility for revisions as industry standards are continually evolving to accommodate the changing marketplace. As industry continues to develop innovative new products and works with stakeholders to improve collection and processing of existing materials, the Material Type and Form Categories need a degree of flexibility to ensure they do not become a barrier to diverting material from landfill.

Conclusion

Thank you for the opportunity to share our comments and concerns. We share your goal of finding practical solutions to the waste and environmental needs of the state while balancing practical considerations related to business impacts, science, health, and sustainability. We believe California has recently enacted some of the most comprehensive environmental and recycling policies in the nation and hope that these comments encourage CalRecycle to continue considering the interaction labeling policies have with other recycling programs. We look forward to our continued conversations on the implementation of truth in labeling standards. In the interim, you or the department may direct any questions or concerns regarding this letter to Terry Webber, Vice President, Industry Affairs at Terry_Webber@afandpa.org.
Thank you,
Vice President, Industry Affairs
American Forest & Paper Association

Comment 105:
Name: Kate Bailey
Date received: 4/2/2024
Source: Email (katebailey@plasticsrecycling.org)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Thank you for the opportunity to submit comments on the SB 343 rulemaking. Please see our comments attached. We are available to answer questions or provide further detail at your convenience.

Attachment text: The Association of Plastic Recyclers (APR) appreciates this opportunity to comment on the SB 343 (Allen) Preliminary Findings Report. Until now, the US has never built a coordinated, comprehensive system that aligns packaging design and recycling infrastructure. Through SB 343 and SB 54 (Allen), California is leading the country to bridge these two systems into one unified circular economy. This is an unprecedented and complex process, and the Materials Characterization Study is an important first step in this process, but more work is needed to provide greater clarity to recyclers, packaging suppliers, and consumer goods companies to effectively comply with the legislation and the goal to improve recycling trust and performance.
The Association of Plastic Recyclers (APR) is a US-based non-profit and the only North American organization focused exclusively on improving the recycling of plastics. APR members are the entirety of the plastics recycling industry from design to collection to recovery to remanufacturing. Plastics recycling is what APR does every day. APR understands the challenges facing the industry and the solutions needed to scale

recycling effectively as a key solution to reduce plastic pollution and waste and move toward a more sustainable, circular economy. The APR membership includes seven California-based processors of post-consumer recycled plastics, as well as dozens of California-based businesses throughout the value chain of plastics recycling.

SB 343 will have both national and global impacts because of the scale of California's economy. Successful implementation is paramount to all stakeholders and the APR appreciates the opportunity to offer the following suggestions to improve the implementation process for SB 343 and its interconnectedness with SB 54:

Maintain PET, HDPE, and PP rigid containers on acceptance list.

Align with industry best practices for size sortation such as APR's sorting guidance as already incorporated into SB 343 & SB 54.

Work with stakeholders to update the methodology and material categories for the Materials Characterization Study.

Extend the timeline for compliance to allow for infrastructure improvements.

Provide greater clarity and regulatory certainty for SB54 and SB343.

SUPPORT FOR PET, HDPE, AND PP RIGID CONTAINERS ON ACCEPTED LIST

The APR strongly supports the designation of PET, HDPE, and PP rigid containers as recognized in the report, specifically categories P1P – P4P, P6P – P9P, P17P – P18P, and P20P. According to the US EPA data, PET, HDPE, and PP packaging make up 80% of the rigid containers and packaging used by consumers. There are functioning, and primarily domestic, markets and buyers for these three major types of plastics. APR maintains a public directory of recycling markets with what buyers will accept: APR Buyers and Sellers Directory. Additional data can be found at plasticsmarkets.org.

There is record high demand for recycled PET and HDPE plastic to be made into new bottles, underscoring the recyclability of the materials as well as the need to collect more domestic supply. It is estimated the recycling rate for PET will need to nearly triple by 2025 to meet the projected demand from regulations and corporate commitments. In fact, the US is now a net importer of rPET to meet this increasing demand. Similar growth rates are needed for HDPE plastics to reach goals of 50% recycled content by 2030.

In addition, US bottle recyclers have the existing capacity to process nearly 50% more PET and HDPE than they do today. Recycling operations in California and across the U.S. are running at less than 100% capacity because of the limited supply of materials, and because of imports of recycled resins. The demand for recycled resins, underutilized capacity, and the increase in recycled resin imports all combine to demonstrate a key point: recyclers need more material to fill recycled content demand with domestic supply. This lack of sufficient supply is one of the biggest hurdles to increasing recycling rates, and we need to significantly increase the collection of

recyclable plastics from households and businesses. Clear recyclable labeling on PET, HDPE, and PP rigid containers, combined with increased funding for recycling programs under SB 54, will help increase supply and result in higher recycling rates across California.

ALIGN SMALL FORMAT PACKAGING WITH INDUSTRY STANDARDS

There are problematic discrepancies within SB 343, SB 54, and the APR Design® Guide on small format packaging which will cause substantial uncertainties and challenges with compliance. The methodology used in the Materials Characterization Study states that “samples were spread out on a sorting table with a grate, allowing for materials smaller than two inches to fall through. Materials greater than two inches were sorted into 91 material categories based on Material Type and Form.” However, the size dimensions of the product are not strictly an “in or out” designation as CalRecycle has proposed. Under APR Guidance, products that are less than two inches in two dimensions require testing to determine how the material will be sorted in a recycling facility. The APR Sort-B-02 Evaluation of Size Sorting Potential for Articles with at least 2 Dimensions Less than 2 Inches is widely recognized as the leading industry standard and was designed by recyclers and MRFs based on extensive comparisons to real-life industrial processes to ensure that the results accurately predict the average sorting process.

The Sorting Potential test was specifically designed to determine whether a plastic article will correctly pass over a lab scale average sized screen developed and validated to simulate the glass screen used in Material Recovery Facilities (MRFs). If a product passes the test, it can be recognized as recyclable. Unfortunately, this would be directly contradictory to the designation by CalRecycle that all packaging less than two inches would be non-recyclable. Furthermore, the CalRecycle proposal mentions “three” dimensions, when the parameter should be “two” dimensions.

The APR strongly encourages CalRecycle to amend the definition and status of small format packaging to align with the APR Design® Guide for Plastics Recyclability and Sorting Protocol test. This would better reflect the dynamic state of packaging design and recycling processing, as well as the complexities and nuances of packaging formats. In addition, CalRecycle has already established the precedent for referring to the APR Design® Guide: SB 343 already references the APR Design® Guide in statute, and the SB 54 draft rulemaking proposes allowing testing as described in the Design® Guide to determine recyclability.

MATERIALS CHARACTERIZATION CATEGORIES NEED FURTHER GRANULARITY

The APR encourages CalRecycle to work with stakeholders to refine the material categories assessed in the Materials Characterization Study, preferably through working groups or stakeholder forums, similar to SB 1383 organics legislation. Many of these categories do not provide enough granularity to match the broad range and diversity of product types and applications. Examples of materials that warrant closer examination include Rigid LPDE lids which are commonly used as closures for PP containers such

as dairy tubs and are allowable with PP containers in MRF bales. Other states consider these materials recyclable. For example, the state of Connecticut accepts both tubs and lids in its list of mandatory collection materials. Overall, more robust coordination with stakeholders on the material categories moving forward will improve compliance with the regulations by providing greater clarity and reducing the burden upon agency staff for managing petitions for material exemptions.

PROVIDE GREATER CLARITY ON PATHWAY TOWARD RECYCLABILITY

Improving and increasing plastics recycling is recognized in California and around the world as a critical solution to reduce plastic pollution and waste. This includes improved collection and recycling of those products already considered recyclable, as well as investments to scale the recycling of those products trending toward recyclability. SB 343 created a binary system of defining recyclability that does not reflect the dynamic state of packaging design and investments in recycling infrastructure, particularly as it was adopted before the passage of SB 54.

The APR supports the proposed SB 1231 (Allen) to create a petition process for a group of producers to label products as recyclable when it can be demonstrated that these materials are trending toward meeting recyclability requirements. It is imperative to create this pathway so more packaging can be recycled at scale.

CONSIDER THE LEAD TIME TO REFLECT CAPITAL COSTS TO CHANGE RESIN MOLDS

Both packaging design and recycling sorting infrastructure take multiple years to develop. Packaging suppliers and brand companies need significant lead time to change resin molds to comply with SB 343. This will require a significant investment in capital as packaging companies may have thousands of SKUs to convert and each mold may cost thousands of dollars to update. APR supports the proposed SB 1231 (Allen) to extend the implementation of SB 343 for 18 months to 24 months, and to allow producers to use a petition process for specific packaging that is trending toward meeting recyclability requirements.

PROVIDE GREATER CLARITY AND PROCESS FOR TECHNICAL QUESTIONS

Recyclers, packaging suppliers, and consumer goods companies need clear and definitive information to help evaluate their compliance options and to guide the necessary capital investments in new packaging design and recycling equipment. The Materials Characterization Study does not provide sufficient detail to match the analysis needed to ensure compliance. Several of our member companies have asked the APR for guidance on SB 343 with specific questions about specific packaging applications. Examples include:

> Labeling for caps and closures: Is having a chasing arrow on a small closure (cap) acceptable if that closure is customarily recycled with the bottle? Example: a #2 beverage container is customarily recycled with the closure on the bottle. The closure is #5 PP and bears a chasing arrow in a location that is not visible to

the consumer at point of purchase. Should the RIC be omitted on such a closure, or is it acceptable when the closure is customarily recycled with the bottle?

Multi-material formats: How will CalRecycle handle multi-material components where a “How2Recycle” logo that instructs consumers to leave the two items together in order to recycle? If a closure is not recyclable under SB343, is it nonetheless permissible to have a “How2Recycle” label that instructs the consumer to remove the closure from the bottle, recycle the bottle and discard the cap into the landfill? What about “How2Recycle” instructions to remove the shrink sleeve and recycle the bottle separately—is the container considered recyclable, assuming the consumer instructions are followed?

These types of questions speak to the need for greater coordination and information exchange between CalRecycle, the PRO, and all stakeholders. The APR requests CalRecycle develop a process to provide ongoing information exchange on these types of technical questions in recognition of the millions of dollars that are needed to update packaging designs, plastic molds, and other equipment to comply with these regulations.

MOVING FORWARD

The APR supports the intent of SB 343 to improve truth in labeling regarding environmental claims, including those pertaining to recyclability. Recyclers need clean, non-contaminated materials to produce high quality recycled feedstock to be remanufactured into new products. Greater consumer confidence and direction in what is acceptable for recycling will help improve recycling rates, which will in turn reduce greenhouse gas emissions, reduce air and water pollution, and reduce waste.

We appreciate the opportunity to engage with CalRecycle to effectively implement SB 343 and SB 54, and the APR staff are available at your convenience to discuss these comments and provide information about the APR Design Guide (https://plasticsrecycling.org/apr-design-guide, plastics recycling processes, or other useful information. Please contact Kate Bailey, Chief Policy Officer, at katebailey@plasticsrecycling.org.

Comment 106:
Name: Danielle Quist
Date received: 4/2/2024
Source: Email (dquist@idfa.org)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Good afternoon, please accept the attached comments on behalf of the International Dairy Foods Association.
Thank you for all the hard work and we appreciate the opportunity to provide input!

Attachment Text: The International Dairy Foods Association (IDFA), Washington, D.C., appreciates the opportunity to comment on the SB 343 preliminary findings report to the Material Characterization Study (MCS). IDFA represents the nation's dairy manufacturing and marketing industry, which supports more than 3.2 million jobs that generate $49 billion in direct wages and $794 billion in overall economic impact. IDFA's diverse membership represents most of the milk, cheese, ice cream, yogurt and cultured products, and dairy ingredients produced and marketed in the United States and sold throughout the world. California represents an important market for dairy products and many IDFA members operate manufacturing and distribution facilities in the state. The U.S. dairy's industry's sizeable footprint in California supports nearly 350,000 jobs and $26.5 billion in total wages while generating $95 billion in overall economic impact in the state, (1) in addition to the $5.3 billion in state taxes contributed by dairy companies.

Recyclability of dairy product packaging is undoubtedly a priority across the dairy value chain. For dairy product and packaging manufacturers, offering a recyclable package is more than a necessity for regulatory compliance, it is mission critical to company business models, sustainability and circularity goals, and Environment, Social, and Governance (ESG) targets. Just as importantly, IDFA members understand that consumers in California and other states seek out recyclable packaging and make conscious efforts to place recyclable packaging in recycling bins. Recognizing the necessity of recyclable packaging, dairy product manufacturers and their packaging suppliers have been investing in innovative materials and formats that offer optimal packaging performance, ease of consumer use, and clearly marked recycling claims.

IDFA offers the following key comments on the SB 343 preliminary MCS report:

1. SB 343 and SB 54 are intentionally interdependent, and IDFA urges CalRecycle to harmonize implementation of both laws so that producers and consumers can clearly decipher which packaging materials are "recyclable" as the term is defined in SB 343. Alignment between the MCS and the Covered Material Category (CMC) list can take many forms, including combining the two documents or developing a "crosswalk" to facilitate understanding.

2. IDFA is concerned that there are large data gaps in the MCS and as a result it does not adequately reflect all materials that are recyclable in California. One such data gap is the result of excluding alternative collection programs, such as store drop-off programs, from the study. This is particularly concerning because flexible packaging and films in particular are not accurately reflected in the study.

3. Closing key data gaps prior to finalizing the 2024 MCS would allow important dairy product packaging materials and formats to bear recycling claims. Absent a recycling label, producers cannot communicate to consumers that the product packaging can be recycled, ultimately limiting the possibility that a material will meet the SB 343 recyclable standard at the 2027 MCS update. Nor will materials meet the SB 54 2032 date upon which all packaging must be either recyclable or compostable. IDFA urges CalRecycle

to take industry input and adjust this first iteration of the MCS to help propel more recyclability across the state.

4. Finally, IDFA asks CalRecycle to consider and adopt the data provided by the Carton Council of North America (CCNA) and the Can Manufacturing Institute, to ensure that MCS data on cartons and steel cans accurately reflects the recyclability of these materials today. To do otherwise will likely lessen the market for these materials and signal a shift to more plastic packaging and higher SB 54 associated fees, which are all contrary to the goals of both SB 54 and SB 343.

GENERAL COMMENTS

1. SB 343 and SB 54 Implementation Should be Harmonized

The California legislature enacted SB 343[2], the "Truth in Labeling Act" in 2021 and one year later, enacted SB 54[3], the "Plastic Pollution Prevention and Packaging Producer Responsibility Act," each with unique mandates, but common terminology and policy goals. Importantly, the two laws are interrelated, with the legislature's adoption of SB 343's definition of "recyclable"[4] into SB 54 and direction to use the MCS as the basis for the CMC list. Absent an exemption, (i) a company must place an SB 343-compliant recyclable label on a dairy product package to direct consumers to place the packaging in the proper bin for recycling, (ii) a waste hauler must include that package's material category and format in curbside pickup, and (iii) a Materials Recovery Facilities (MRF) must sort and recycle that material such that it is ultimately processed by a large volume transfer/processor (LVTP) into a responsible end market. If all three steps are not met, it is very unlikely that a food packaging material and format will meet any of the performance measures required by SB 54, including the mandate that all packaging materials and formats are recyclable or compostable by 2032. We therefore urge CalRecycle to abandon the current siloed implementation approach and consider the intentional, inherent, and cyclical interdependence of these two statutes to develop harmonized implementation documents and policies aimed at increasing producer and public understanding of the two laws.

To assist obligated producers' and their value chains' understanding of which materials and formats CalRecycle deems potentially "recyclable" as a category for purposes of SB 343, we ask CalRecycle to further interpret the data presented in the final published MCS report. The preliminary report analyzed general material types, various types of metal, glass, fibers, and miscellaneous materials. In all, IDFA calculated 89 unique categories in the MCS, but there is no recyclable determination for those categories in the document. CalRecycle leaves producers to decipher the raw data in the MCS, or rely on the CMC list, notwithstanding SB 343's requirement that producers utilize the MCS as a first step in determining whether packaging can include a recyclable label.

It is important for both producers and the public to understand which materials and formats are recyclable. As one option, we recommend that CalRecycle merge the MCS and CMC list to create a single integrated study that can be updated as required by law. This option would ensure that for each material category and format, CalRecycle's

recyclability data and determinations are aligned, providing a clear path to understanding the basis for a recyclable determination.

Alternatively, CalRecycle could develop a “crosswalk” or similar mapping or key between the MCS and CMC list to provide producers and the public an easy means to cross-reference the two documents. IDFA believes that, at a minimum, this would be necessary because the two documents do not use the same material and format identifiers. For example, the CMC list assigns a Category ID of “PF4P” for aseptic containers and “PF5P” for gable-top cartons. In contrast, the MCS provides a Material Type and Form code of “X03” for aseptic containers and “X02” for gable-top containers in Table 3A and Appendix 4, but no coding for Tables 1 and 2, nor for Appendix 1. In another example, the MCS lists nine separate glass categories, while the CMC list provides only six glass categories, all of which are potentially recyclable. We recommend that CalRecycle identify each material and format with a unique identifier across both documents to help guide producers to the relevant data and CalRecycle’s potential recyclability determination. Consistency is essential and will aid companies in understanding whether material categories are potentially recyclable for labeling purposes, EPR compliance, data collection and recordkeeping.

2. The MCS Survey Process Left Large Gaps

The preliminary MCS did not survey or report on non-curbside recycling, such as institutional, mixed waste, or take-back programs, which can bear a recycling claim in compliance with PRC section 42355.51(d)(2)(B)(i). IDFA urges CalRecycle to expand the scope of the MCS survey to include other methods of collection that contribute to the recyclability of packaging materials.

This is of particular importance for the future recyclability of flexible plastic and films, as discussed below.

IDFA is also concerned that CalRecycle’s survey of LVTPs does not adequately represent the number of LVTPs in the state. CalRecycle surveyed only 37 LVTPs in 30 of 58 California counties. Of those 37 surveyed LVTPs, only 10 were sampled. With such a small sample size, we are concerned that the preliminary MCS’s findings underrepresent the number of LVTPs serving at least 60% of statewide recycling programs. It is critical that the methodology used to

develop the MCS results in accurate findings on access and sortation and that the updates are reflected in the final MCS.

3. Improving the Accuracy of the MCS Scores is Critical to Producers.

In public meetings, CalRecycle stressed that once the 2024 MCS is final, SB 343 limits its ability to update MCS data prior to the statutory 2027 update. With the labeling standards becoming effective 18 months after publication of the final MCS, IDFA anticipates that producers will need to comply with SB 343 by late 2025, after which a producer will be prohibited from making a recycling claim on a product package unless the material and format meets the state’s recyclability criteria.

Unless a producer can include a recycling claim on product packaging, consumers will not place the product packaging in the recycling bin. Thus, without a recycling label, we seriously question the feasibility for any packaging material to improve, both practically or theoretically, its scores on access and sortation before the 2027 MCS is conducted and published. Similarly, materials that are trending upwards, meaning that they are increasing in recyclability, should have the ability to bear a recycling label and a mechanism to be added to the MCS prior to the 2027 update.[5] This topic has been the subject of numerous discussions at CalRecycle public meetings. For these reasons, ensuring the most accurate and comprehensive 2024 MCS report is of critical importance to dairy product manufacturers and packaging companies seeking to increase the recyclability of packaging materials and formats.

Moreover, packaging manufacturers and their dairy product customers have invested heavily over the last decade to achieve plastic source reduction results across many product lines.

Manufacturers are also working to utilize new materials, such as bio-based and renewable polymers to meet industry and consumer demands. IDFA is concerned that without more robust and accurate data in the MCS, there will be a significant loss of investments and innovation that support the goals of SB 343, SB 54, and company sustainability targets.

COMMENTS ON SPECIFIC COVERED MATERIALS AND FORMATS

IDFA's position on packaging is material neutral and we support flexibility to allow dairy product manufacturers to choose the appropriate material and format to ensure food safety and product quality while meeting consumer demands. Without more robust data, IDFA is concerned that the MCS published in 2024 would exclude common and recyclable dairy product packaging materials and formats from qualifying as potentially recyclable. While IDFA acknowledges that CalRecycle worked diligently in conducting the MCS, we believe that CalRecycle utilized inadequate representative sampling (among other factors) that resulted in large data gaps in both access and sortation. As a result, we believe that the preliminary MCS findings underrepresent the access and sortation scores that dictate the recyclability of entire categories of dairy product packaging materials and formats.

1. Non-CRV Gable-top Cartons/Aseptic Containers

Packaging materials and formats described as "aseptic containers" (hereinafter referred to as "cartons" and not "containers" and "gable-top cartons") do not meet the minimum access and sortation recyclability requirements in the preliminary MCS report. Both aseptic and gable-top cartons are common dairy product packaging materials and formats, utilized for fluid milk, cream, half-n-half, buttermilk, and similar fluid dairy products. Importantly, both are used for milk in California's school meal programs. Cartons have many positive attributes for dairy product manufacturers. For example, cartons delivered to a dairy processing plant are flat packed and do not require extensive machinery for utilization in the manufacturing plant. Aseptic cartons offer an

extended shelf life for dairy products and require no refrigeration until opened, which reduces food waste and decreases the amount of energy needed across the supply chain as there is no need to maintain cold-chain distribution. Cartons have been recognized as recyclable on the nationally recognized How2Recycle label which is used by many IDFA members with national distribution.

IDFA is aware of access and sortation data maintained by the Carton Council of North America (CCNA)[6] and we strongly urge CalRecycle to consider and adopt the data to supplement its own MCS data and report before the study is finalized. For access, CCNA's review of the MCS report identified over 60 communities where California residents have access to aseptic and gable top carton recycling that were not counted in the preliminary MCS report. If these communities are included, then 69 percent of California's population has access to recycling for aseptic cartons and 72 percent can recycle gable-top cartons. With the inclusion of this additional information, we believe that aseptic and gable top cartons exceed the threshold for "access" to recycling as defined in SB 343.

For sortation, CCNA's data identifies 32 MRFs in California that accept aseptic and gable top cartons as part of their inbound stream for recycling. Eleven of those MRFs sort cartons into PSI Grade 52 while the remaining 21 MRFs bale cartons included in mixed paper to be sent on for recycling. According to CCNA, MRFs that instruct residents to put cartons in bins, accept those cartons and then include those cartons in mixed paper, should qualify as taking the appropriate actions of "sorting cartons into a defined recycling stream." With all the MRFs that CCNA identified as accepting and processing cartons for recycling, we believe that cartons meet the recycling threshold based on sortation, as specified in SB 343.

Cartons are also an example of a packaging sector that has actively sought to increase consumer access to recycling; CCNA has increased household access to carton recycling by over 200 percent since its inception in 2009. As long as cartons are able to maintain a recycling label and curbside access, the carton industry is confident that it will reach high levels of recyclability by 2032.

IDFA is concerned that if the MCS data does not support categorization of cartons as "potentially recyclable" for purposes of SB 343 and SB 54, there could be several short- and long-term market consequences for dairy product manufacturers that run counter to the policy goals of SB 343 and SB 54. First, in accordance with SB 343, brands would be unable to include a recycling claim on the cartons, discouraging consumers from placing cartons in a recycling bin. Waste management companies and MRFs, in turn, would not be obligated to collect and sort cartons. Without consumers and the waste management industry's actions, there will likely be a precipitous decline in carton recyclability, making it challenging to improve the access and sortation scores by 2027. Ultimately, IDFA is concerned that without updating the MCS with additional data, cartons would not meet the SB 54's requirement for all packaging to be potentially recyclable or compostable by 2032.

In addition, without a more accurate MCS, IDFA would expect the market to respond to signals from the MCS that cartons will not comply with SB 54's performance targets, creating incentives for manufacturers and customers to consider phasing out cartons from their product lines. As noted above, carton manufacturers are investing heavily in innovations to develop cartons that use bioplastics and renewable materials. Moreover, carton manufacturers are investing in technology to reduce the multilayer plastic used in cartons from 20 percent to a much lower amount. This is an example of the type of plastic source reduction SB 54 is intended to encourage through mandates and eco-modulated fees, not discourage. Consequently, the infrastructure, technology, and gains carton manufacturers have made in plastic source reduction, recyclability and recycling rates would be lost as the market adjusts to the SB 54 regulations.

Dairy manufacturing companies would also begin to weigh the tradeoffs and business considerations of using more recyclable alternatives, such as glass and plastic PET and HDPE. IDFA members expressed concerns that glass, while highly recyclable in California, is a heavy and breakable material with high transportation costs that would have a negative impact on company and product specific LCA performance. With the breakage of glass bottles also comes an increase in food waste. PET and HDPE rigid containers are highly recyclable plastic alternatives to cartons that are commonly used for fluid milk and other fluid dairy products. At the plant, a manufacturer seeking to transition away from flat packed cartons would need to modify and, in some cases, expand the manufacturing plant itself to accommodate the equipment necessary to utilize plastic jugs (i.e., blow mold machines).

Importantly, transitioning from cartons comprised of around 20 percent plastic to a 100 percent plastic packaging would result in much higher fees under the fee-setting requirements of SB 54. The average weight of 64oz HDPE milk jug without a cap is between 43-60 grams, while the plastic in a 64oz carton weighs about 12 grams. SB 54's eco-modulated fees are largely based on weight, and additional fees will be assessed based on the weight of plastic used in packaging, including the annual $500 million fee on plastic packaging. This means that if dairy product manufacturers must transition to plastic containers, SB 54 will significantly increase the cost of the packaging material because of the increased plastic material and higher weight per unit.

We are also concerned that deeming cartons as non-recyclable will have a great impact on school milk programs. Based on IDFA's information, 635 schools across 92 districts serve close to 1 million school-age children in California. Non-carton alternatives are glass and plastic; however, school nutrition programs would not be able to use glass containers, especially for younger children due to safety concerns. Smaller single-serve plastic milk containers are available, but as noted above, the additional SB 54 fees associated with using plastic packaging would greatly increase the cost to provide nutritious milk to school-aged Californians.

SB 343 cannot be implemented in a vacuum. The stated goals of SB 54 are to eliminate cost- prohibited and ineffective recycling methods and to incentivize packaging companies to eliminate, redesign or shift packaging to covered materials that can be more efficiently recycled. However, SB 54 is designed to reduce the amount of plastic

packaging sold, marketed, and distributed in California by imposing hefty financial penalties and fees on the use of plastic as compared to non-plastic materials. Without the ability to utilize cartons for many fluid dairy products, SB 54 would strongly incentivize and ultimately demand more plastic by unit and weight, contrary to the goals of the statute. IDFA therefore urges CalRecycle to consider CCNA's data and update the MCS to reflect that cartons, today, are efficiently and cost- effectively recycled to responsible end markets.

2. Steel Food Cans

Steel cans are also used as packaging for dairy products, including items such as canned condensed and evaporated milks and similar products. IDFA was surprised to learn in the preliminary MCS report that only 57 percent of LVTPs sort steel cans into defined streams for sale. That data does not appear consistent with data reporting that 95 percent of Californians have access to recycling for steel cans and lids. Ultimately, the CMC list categorizes steel cans as not "potentially recyclable."

Residential steel can recycling is a success story in California and other states because consumers know steel cans are recycled and they put the materials in their recycling bins. For that reason, steel cans have an enviously high 58 percent recycling rate. Magnets used by MRFs facilitate sortation of steel cans to a robust end market. Importantly, the Institute for Scrap Recycling Industries (ISRI) recycling specification does not require removal of the steel can's plastic label, furthering the recyclability of steel cans with a food label.[7] It is also reported that steel cans are 30 percent lighter than 30 years ago8, providing another example of industry-led source reduction.

IDFA urges CalRecycle to reconsider the steel survey responses and data used in the preliminary MCS report. Perhaps survey responders confounded aerosol steel cans, or separated out steel and tin cans, or mixed in aluminum cans. If CalRecycle is unable to resolve data concerns to support the recyclability of steel cans, IDFA recommends that CalRecycle create an additional category within the Metal group titled, "Tin/Steel Food and Beverage Containers - non-CRV" to capture sanitary food cans. We do not believe that the so-called "Sanitary Food Cans" is adequately categorized by the preliminary MCS. The closest potential existing category is M07, but that category includes bi-metal items with steel bodies and aluminum lids where Sanitary Food Cans are typically all steel, which has a positive impact on recyclability. We ask CalRecycle to re-run its assessment using this new category to account for this long-standing, highly recyclable category.

3. Flexible Packaging and Films

Flexible packaging and films are common dairy packaging materials and formats, including extensive applications in cheese and dry powders. Flexible packaging and films are important dairy product packaging materials because they are lightweight, maintain excellent dairy product quality and food safety, and provide an extended shelf life that reduces food waste. The preliminary MCS data was based solely on curbside collection and recycling with no data on alternative collection programs such as retail

drop-off points. SB 343 does not limit recyclability to curbside collections and data on alternative collection programs should be included in the MCS. Not surprisingly, CalRecycle reports essentially a zero material recovery rate for flexible packaging and films. There is a significant gap in the MCS that makes it impossible to report on the recyclability of these materials; this is a major concern to IDFA and its members.

Information on access and recycling for flexible packaging and films is available and industry stakeholders continue to study and develop data on recycling of these materials. The Sustainable Packaging Coalition and GreenBlue reported in 2022 that 87.6 percent of Californians live within three miles of a store drop-off point for films and 64.1 percent live within five miles of a drop-off site.[9] That same report notes robust end markets and substantial growth in film reclamation capacity. A major plastics reporting source also notes the strong demand for polyethene films by end users.[10] IDFA recognizes that data on flexible packaging and films does not align with the reporting method and format of the MCS, but we strongly urge CalRecycle to provide information on access and alternative collection programs in the MCS in a way that allows producers and the public to gain an understanding of how these important packaging materials and formats can meet California's recycling criteria.

Moreover, SB 54 is designed to help drive more collaboration between the Producer Responsibility Organization, producers, non-profits, and industry stakeholders to increase the investment necessary to improve recyclability of materials such as flexible packaging and films, to include curbside collection and recycling infrastructure and take-back programs. Standardized collection guidelines and consumer education and an investment in recovery infrastructure could ultimately lead to technology innovations and collection efficiencies that would allow flexible packaging to be more effectively collected for recovery. California has the opportunity to work collaboratively and lead the nation down this path, and we encourage bold action.

IDFA thanks CalRecycle for the enormous task of conducting the survey and providing information about the recyclability of packaging materials in California. The number of public meetings and stakeholder engagement opportunities throughout this process has been welcomed and appreciated. IDFA supports CalRecycle's efforts and the improvement of recyclability and circularity across California and the nation. Through our comments, IDFA respectfully asks CalRecycle to consider our suggestions, which we believe will provide more clarity to producers and consumers. We also ask CalRecycle to include the more robust data available for cartons and steel cans to ensure that these common and recyclable materials can continue as options for dairy product manufacturers. Please do not hesitate to contact IDFA if you have any questions.
Regards,
Danielle Quist
Vice President, Regulatory Affairs and Counsel International Dairy Foods Association

Footnotes:

1 IDFA maintains economic and job information related to the impact of the dairy foods industry in all states, including California at www.idfa.org/dairydelivers.2. Senate Bill 343 [Allen, Chapter 507, Statutes of 2021]
3 Senate Bill 54 [Allen, Chapter 75, Statutes of 2022]
4 Cal. Pub. Resources Code § 42355.51
5 PRC section 42061(a)(3)(B)
6 Carton Council of North America includes IDFA members TetraPak, Elopak, Pactiv Evergreen, and SIG.
7 ISRI Ferrous Scrap Guidelines FS 213, “Steel Can Bundles.” Cans may be baled without removal of paper labels.
8 https://www.waste360.com/waste-recycling/steel-cans-2552
9 “GreenBlue/SPC California Regional Film & Bag Study - Final Report.” Sustainable Packaging Coalition, November 15, 2022.
10 Staub, Colin. “Major PE Film End User Predicts ‘strong Demand’ in 2024.” Plastics Recycling Update, February 28, 2024. https://resource-recycling.com/plastics/2024/02/28/major-pe-film-end-user-predicts-strong-demand-in-2024/

Comment 107:
Name: John Richard
Date received: 4/2/2024
Source: Email (jrichard@flexpack.org)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Please accept the attached document as FPA's comments on the Preliminary Materials Characterization Study Conducted for SB 343.
Please don't hesitate to reach out if you have any questions.
Best,
John

John J. Richard
Director, Government Relations
Flexible Packaging Association
185 Admiral Cochrane Drive
Suite 105
Annapolis, MD 21401
(443) 534-3771
jrichard@flexpack.org

Attachment Text: April 2, 2024
CalRecycle
DRRR-2023-1728
Submitted Electronically to wastechar@calrecycle.ca.gov
RE: SB 343 Preliminary Findings
Dear Director Wagoner,

The Flexible Packaging Association (FPA) is submitting these comments on the Preliminary Findings of CalRecycle's SB 343 Material Characterization Study.

I. Introduction to FPA.

I am John Richard, Director of Government Relations at FPA, which represents flexible packaging manufacturers and suppliers to the industry in the U.S. Flexible packaging represents $42.9 billion in annual sales; is the second largest, and fastest-growing segment of the packaging industry; and employs approximately 85,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products.

These are products that you and I use every day—including hermetically sealed food and beverage products such as cereal, bread, frozen meals, infant formula, and juice, as well as sterile health and beauty items and pharmaceuticals, such as aspirin, shampoo, feminine hygiene products, and disinfecting wipes. Even packaging for pet food uses flexible packaging to deliver fresh and healthy meals to a variety of animals. Flexible packaging is also used for medical device packaging to ensure that the products packaged, like diagnostic tests, IV solutions and sets, syringes, catheters, intubation tubes, isolation gowns, and other personal protective equipment maintain their sterility and efficacy at the time of use. Trash and medical waste receptacles use can liners to manage business, institutional, medical, and household waste. Carry-out and take-out food containers and e-commerce delivery, which became increasingly important during the pandemic, are also heavily supported by the flexible packaging industry. For CalRecycle's SB 343 Preliminary Material Characterization Study, FPA's members manufacture across the mixed and flexible plastic categories.

Flexible Packaging remains the packaging of choice due to its highly effective design features in lightweighting, durability, and the unique ability to tailor the chemistry of the package to the item being packaged. For food products, which represent 44% and $19 billion of flexible packaging sales in the U.S., FPA's members utilize technologies such as portion control, reclose features, perforated plastics, film toughness, and modified atmosphere packaging (MAP) to ensure the preservation of food. Flexible packaging's unique characteristics provide food loss and waste reduction benefits to every segment of the food supply chain, including after purchase by consumers. These characteristics include barrier properties of the materials used in flexible packaging which extend transport as well as shelf life, reclosability features, enhanced product evacuation, and the optimization of product-to-package ratios.

Thus, FPA and its members are particularly interested in solving the plastic pollution issue and increasing the recycling of solid waste from packaging. While FPA greatly applauds the initial effort by CalRecycle to determine what products are currently being recycled, FPA has identified important gaps in CalRecycle's data and terminology.

II. Flexible Packaging is Often Recycled Separately from Industrial-Age Materials

According to the “internet research” that CalRecycle staff conducted to compile the jurisdiction section of this report, flexible packaging products are accepted at rates ranging from 0% (other multi-material laminate single-use) to mixed 94% (mixed plastic multi-use).1 There are several problems with these figures. The Sustainable Packaging Coalition’s (SPC) latest data shows that 91.4% of United States citizens have access to recycling programs.2 The same study shows that 54.3% of people have access to store drop-off programs and about one third of people nationwide rely solely on store drop-off programs for their recycling needs. FPA strongly encourages CalRecycle to include this vital segment of the recycling market in its analysis in order to have a complete picture of the state of recycling in California. One potential avenue for obtaining this data would be to work with the Flexible Film Recycling Alliance (FFRA), an initiative by the Plastics Industry Association and FPA, on their best-in-class plastic film recycling directory.3 FPA also urges closer coordination beyond “internet research” with state and local governments as well as industry associations such as FPA, FFRA, PLASTICS, SPC, the Recycling Partnership (TRP) (that also has a Flim and Flexibles Coalition), and the Association of Plastic Recyclers (APR) to ensure data accuracy and transparency.

CalRecycle’s preliminary study also does not consider advanced recycling facilities, where flexible packaging is primarily recycled. Common advanced recycling technologies like pyrolysis, gasification, and depolymerization convert used plastics that would be considered waste into high-value materials using methods that are regularly deployed in other industries. Despite being a nascent industry compared to other materials that have had centuries to figure out how to design for a circular economy, our industry has voluntarily invested over $7 billion which has led to a massive 21 billion pounds of plastic waste being diverted from landfills across the nation each year.4 In time, we are confident that engineers and chemists will be able to definitively make the case for a circular plastics economy.

A common myth that our Association constantly must dispel is that advanced recycling is just burning plastic waste through incineration when in reality, this type of recycling relies on cutting-edge technologies that purposefully operate with little to no oxygen (allowing for the recovery of material). Furthermore, advanced recycling produces emissions equal to or lower than similar facilities in other industries with the added benefit of no measurable lead or dioxin emissions.5 All advanced recycling facilities are subject to the same Clean Air Act standards as mechanical recycling and often outcompete those facilities on environmental indicators. These facilities must be incorporated into CalRecycle’s next draft study in order to have a comprehensive understanding of what is recycled.

III. CalRecycle’s LVTP Data is Not Useable for the Report’s Intended Purpose

With regard to CalRecycle’s analysis of materials recovered by Large Volume Transfer/Processors (LVTPs), there are also several issues. Given the brief timeframe of the analysis, the data is not generalizable because it was collected in a single month of 2023 and therefore does not account for changes to the waste stream over time or even the relatively predictable seasonality of the waste stream.6 If the data is not generalizable, it cannot be used to inform the programs SB 343 commissioned it for.

Further, this study did not fully document the technical methodology used in the evaluation of LVTPs, and it is clear that the widely accepted industry standard developed by The Association of Plastic Recyclers was not used.7 The Evaluation Protocol was specifically designed to determine whether a plastic article will correctly pass over a lab-scale average-sized glass screen that performs similarly to that used in production facilities. FPA and The California Chamber of Commerce both recommend that the Evaluation Protocol be considered in developing the methods employed within future iterations of the LVTP Material Characterization Study to promote accuracy. Additionally, FPA requests that CalRecycle make all data publicly available to inform stakeholder feedback in future iterations of this draft report.

IV. The Material Characterization Study Does Not Make “Recyclable” Determinations

The FPA endeavored to make a distinction between the terms “recyclable” and “recycled.” The process SB 343 has established is taking incomplete data on what is currently recycled and using it to determine what is recyclable. This will have the unintended consequence of materials losing their recyclability designations or claims, resulting in the likely diversion of these materials to landfills, undermining millions of dollars of private and public investments to increase the collection and sortation of these materials. The loss of those claims, if measured correctly, will ultimately lead to a decrease in California’s recycling rates. The stated intent of the Preliminary Findings Report is to provide the public with information to identify whether a product or package is recyclable in California. However, CalRecycle’s preliminary report does not provide clear guidance as to exactly which products or packaging CalRecycle is considering determining “recyclable” in California, i.e., which material types and forms are[1] collected for recycling by jurisdiction recycling programs that encompass at least 60% of the population of the state; and2 sorted into defined streams for recycling processes by large volume transfer/processing facilities that collectively serve at least 60% of recycling programs statewide. These determinations should be made explicitly within the report once a more comprehensive and accurate analysis is completed.

V: Conclusion and Next Steps

Thus, while the goals of CalRecycle’s report are laudable, FPA submits that CalRecycle’s failure to take into account the entirety of the recycling system, incomplete data, nonexistent coordination with local jurisdictions responsible for recycling programs, as well as organizations such as FPA, TRP, APR, FFRA, PLASTICS, and SPC, charged with assisting members with recycling of packaging, and lack of generalizability make this report far too preliminary to make any sort of recyclability claims about any of the evaluated materials. FPA encourages CalRecycle staff to adhere to widely adopted industry standards, establish accurate and reliable datasets that can be shared transparently, and coordinate with the industry to get an accurate picture of the recycling system before the next draft report is published.

FPA is pleased to provide these comments on the Preliminary Findings of CalRecycle’s SB 343 Material Characterization Study and reiterates our and our members' eagerness

to work with CalRecycle on improving the packaging nuances that are missing to ensure better environmental outcomes.

In advance, thank you for your consideration. If we can provide further information or answer any questions, please do not hesitate to contact me at (443) 534-3771 or jrichard@flexpack.org.

Respectfully,
John J. Richard
Director, Government Affairs
Flexible Packaging Association

Comment 108:
Name: Dylan de Thomas
Date received: 4/2/2024
Source: Email (ddethomas@recyclingpartnership.org)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: April 2, 2024
California Department of Resources Recycling and Recovery (CalRecycle)
wastechar@CalRecycle.ca.gov
Re: SB 343 Preliminary Findings Report
Dear SB 343 Study team:

Enclosed are our comments on the SB 343 Characterization Study Preliminary Finds as released on December 28, 2023. Thank you for your efforts to research and prepare this groundbreaking, first-of-its-kind study. Thank you too for your thorough response to our Public Records Act information request and ongoing discussions. As you asked, we have not held back on providing detailed feedback, in the spirit of collaboration on a difficult but important task. The Recycling Partnership is a national nonprofit with a mission to advance the circular economy by building a better recycling system. Please don’t hesitate to contact us if you have any questions about the information we’ve provided.

Dylan de Thomas
VP of Public Policy & Government Affairs
and
Linnea Whitney Skierski
Director of Policy Implementation
of The Recycling Partnership
Attachments:
1. SB_343_TRP_Comments_and_Cover_Letter_Final_4-2-24

Attachment text: April 2, 2024
California Department of Resources Recycling and Recovery (CalRecycle)
wastechar@CalRecycle.ca.gov
Re: SB 343 Preliminary Findings Report

Dear SB 343 Study team:
Enclosed are our comments on the SB 343 Characterization Study Preliminary Finds as released on December 28, 2023. Thank you for your efforts to research and prepare this groundbreaking, first-of-its-kind study. Thank you too for your thorough response to our Public Records Act information request and ongoing discussions. As you asked, we have not held back on providing detailed feedback, in the spirit of collaboration on a difficult but important task.

The Recycling Partnership is a national nonprofit with a mission to advance the circular economy by building a better recycling system. Please don't hesitate to contact us if you have any questions about the information we've provided.

Sincerely,
Dylan de Thomas
VP of Public Policy & Government Affairs
The Recycling Partnership

Linnea Whitney Skierski
Director of Policy Implementation
The Recycling Partnership

Attachments:
1. SB-343-TRP-Comments-Final-4-2-24

The Recycling Partnership
Comments on SB 343 Characterization Study Preliminary Findings Released December 28, 2023

Summary

1. CalRecycle addressed many challenges to produce this groundbreaking, first-of-its-kind draft report. But improvements in process, report transparency, and methodology are needed.

2. CalRecycle's process to produce SB 343 Characterization studies should be more predictable and open to public input.

2A. Publish and maintain an up-to-date schedule of SB 343 related activities.

2B. Conduct an annual public data solicitation.

2C. Commit to annually publish new information pertinent to recyclable evaluations.

3. The report needs more clarity and transparency.

3A. Publish a separate technical appendix with analysis details and data.

3B. Include a clear explanation of California's new recyclability framework and its implications under SB 343 and SB 54.

4. Consider revisions to strengthen the study methodology.

4A. Increase alignment of SB 343 and SB 54 material categories and simplify CalRecycle's methodology for using SB 343 study findings to support SB 54 recyclable determinations.

4B. Validate draft findings through comparisons to established data sources. 4C. Consider adjusting the methodology for evaluating the "sorting for recycling" criterion.

Below we provide details and specific suggestions for each of these key comments.

1. CalRecycle addressed many challenges to produce this groundbreaking, first- of-its-kind draft report. But improvements in process, report transparency, and methodology are needed.

This initial SB 343 Characterization Report is crucially important as it establishes a template for future studies and baseline evaluation of recyclability pertinent to both labeling under SB 343 and compliance with the SB 54 recyclable mandate. Companies across the consumer product supply chain are grappling with how to navigate these complex laws that could catalyze a quantum leap in circularity. But essential to success is a fair, unambiguous process, a sound research methodology, and a transparent report documenting results that are widely accepted by diverse stakeholder groups.

Our feedback below is intended to help CalRecycle to deliver these outcomes.

2. CalRecycle's Process to Produce SB 343 Characterization Studies Should be More Predictable and Open to Public Input.

In the lead up to the release of the SB 343 Materials Characterization Study Preliminary Findings (Preliminary Findings), the Recycling Partnership (The Partnership) and other stakeholders asked for clarification of CalRecycle's plans, including the study methodology, the timeline for public review, whether CalRecycle would consider outside data submissions, and the process that would lead to finalization of results. We were disappointed that the initial schedule announced with the December 28, 2023, report publication did not provide more time for public comment and CalRecycle revisions, as it called for comments by February 29, 2024, with final publication required by April 12, 60 days after the February 13 workshop.

We appreciate that, by extending the comment period and indefinitely postponing the official, required workshop (which sets off the 60-day clock for report finalization), CalRecycle appears to have acknowledged the need for a slower and more methodical process.

Going forward we offer the following suggestions:

2A. Publish and Maintain an Up-to-Date Schedule of SB 343 Related Activities.

For this year's initial SB 343 Material Characterization Report, CalRecycle should:

• Take the time needed to thoroughly review and incorporate feedback received by the April 2 deadline, and to establish a sound template for future years.

• Also strive to publish the final report ideally by Oct. 1, leaving enough time to update the SB 54 recyclable list based on final SB 343 Study findings no later than January 1, 2025, as required per PRC Section 42061(e). Given the Study's importance to evolving company compliance strategies, the SB 54 recyclable list should be updated as soon as possible, ideally in association with the final SB 54 Covered Material Category (CMC) list by July 1, 2024, per PRC Section 42061(a).

For future years, the schedule should cover all aspects of SB 343 implementation, including:

• Public data and information submissions

• Target dates for CalRecycle publication of new information pertinent to SB 343 recyclability evaluations

• Planned research and RFP processes

• Public input processes

• Scheduled publication of draft and final findings, including workshop dates

Adequate time should be provided for public review and feedback, and for CalRecycle to consider new data and feedback and to make needed revisions.

We suggest the schedule target publishing final SB 343 Materials Characterization Studies and/or new data by October 1 of each calendar year, leaving sufficient time to update the SB 54 recyclable list based on new information by the following January 1 through 2032, per PRC Section 42061(e).

2B. Conduct an Annual Public Data Solicitation.

For this year's initial SB 343 Material Characterization Report, CalRecycle should consider use of public data submissions received by the April 2 deadline that it deems would contribute to more accurate conclusions (validated by, for example, the evaluation criteria listed in the third bullet below).

Going forward, CalRecycle should annually solicit data and information (including a validation rationale) from the public supporting potential changes to the most recent SB 343 Material Characterization Study findings for specific material types and forms.

CalRecycle's vetting should evaluate key considerations, for example, whether the data

submission:

• Cites a known source (including but not limited to CalRecycle databases) that CalRecycle deems reliable and judges to be reasonably accurate.

• Provides strong evidence of its validity (e.g., documentation of facility/jurisdiction practices such as signed agreements or testimonials).

• Is specific and provides other validation methods or supporting evidence.

• Is corroborated by reputable sources as reasonable.

• Is supported by a diversity of stakeholders.

• Fills key information gaps.

• Overall, would increase the accuracy of existing SB 343 study findings.

Ahead of each SB 343 Materials Characterization Study, a data solicitation should also request feedback on the draft study methodology and Request for Proposals (if applicable) to inform prospective bidders and inform public data submissions.

2C. Commit to Annually Publish New Information Pertinent to Recyclable Evaluations.

As authorized under PRC Section 42355.51(d)(1)(B)(iii), CalRecycle should commit to publishing new data it deems appropriate that would impact certain recyclability findings of prior SB 343 Material Characterization studies, for the express purposes of evaluating the validity of recyclable labeling claims under SB 343.

In addition to considering public data submissions, CalRecycle should review its own databases and studies, including but not limited to information gathered through the Recycling and Disposal Reporting System required pursuant to SB 343 under PRC Section 42355.51(d)(1)(A). CalRecycle should also consider data and information contained in the PRO's annual report and data submissions under SB 54.

While conducted pursuant to SB 343, the above process to solicit, evaluate, and publish new data should be integrated into the process CalRecycle is required to establish to annually update the SB 54 recyclable list under PRC Section 42061(e).

3. The Report Needs More Clarity and Transparency.

We sincerely applaud CalRecycle's efforts to develop and implement an unprecedented new study methodology and template that satisfies complex statutory requirements and reflects on-the-ground recycling system realities. Our constructive criticism and suggestions are presented in this context.

Even after very close report scrutiny of the published report and data provided through a Public Records Request, and discussions with CalRecycle staff, we were unable to fully discern the study methodology or interpret some key findings and conclusions.

We offer the following suggestions for this year's initial report and future ones:

3A. Publish a Separate Technical Appendix with Raw Data and Analysis Details.

While perhaps not pertinent to most readers, the details are essential to help build stakeholder buy-in and for readers with a large stake in the study outcomes to understand where changes and investments may be most needed. In addition to a report format, the technical appendix could also include digital files (e.g., spreadsheets) with clear explanations. In effect, we are suggesting that CalRecycle publish information similar to that provided in response to Public Records Act requests, but in a more consistent and concise format.

Subject to confidentiality concerns and any necessary redactions or anonymous labeling (e.g., identifying facilities by letter), we suggest the technical appendix include:

• A step-by-step summary of, and rationale for, the methodology and calculation steps used for all aspects of the study.

• Related to analysis of recycling access

o Final findings showing which material types and forms are included in each California jurisdiction's residential curbside program

o The URL website address or other citation of information reviewed

o PDFs showing screenshots or copies of information reviewed

o An explanation of the step-by-step methodology used

• Related to analysis of processing facility sortation practices

o A list of the processing facilities engaged at each step, including those:

■ Selected for inclusion

■ Non-responsive to surveys

■ Surveyed in person, on-site or through other means

■ Where outflow samples were hand-sorted or visually characterized

o A list of outflows/defined streams identified by each facility, and material types and forms they consider contaminants vs. sorted for recycling.

o A summary of the number and weight of samples hand sorted and visually characterized from each outflow at each facility, and a rationale for using visual characterizations, which is far less accurate than hand-sorting.

o A clear and consistent list of which material types and forms found in which outflows/defined streams that CalRecycle determined to be "sorted for recycling" or excluded.

o For each excluded category, the specific reasons for the exclusion (including reference to related data and calculations). We found some information in the report and/or documents provided via Public Records Request to be inconsistent and/or unclear in this regard. For example, inconsistent information related to exclusion of some material types and forms appears on page 9 and Appendix 6, and in the description of rare material types and forms in Appendix 8.

o A spreadsheet identifying which counties (or other CalRecycle proxies for recycling programs) CalRecycle determined are served by each facility, and whether a minimum threshold of coverage was required.

o A qualitative and quantitative discussion of accuracy of findings, especially related to findings with significant statistical uncertainty.

o A clear explanation of the calculations and steps taken to arrive at final findings, including spreadsheets or other documentation.

• Related to adaption of SB 343 Study findings focused on Material Type and Form categories to data addressing SB 54 Covered Material Categories:

o A "cross walk" table showing how CalRecycle mapped the two distinct categorization systems.

o Documentation of calculations to adjust specific findings from SB 343 Study for purposes of SB 54.

3B. Include a Clear Explanation of California's New Recyclability Framework and Its Implications Under SB 343 and SB 54.

Even among seasoned recycling policy analysts who have studied SB 343 and SB 54 in detail, the recyclability related provisions of these laws are viewed as among the most complex and difficult to understand of California's many recycling statutes.

Stakeholders of all types, especially those in the consumer product supply chain responsible for compliance, need clear and definitive information to help evaluate compliance options and strategies. There are many critical gaps that only CalRecycle, as the state agency charged with implementation, can help to clarify.

To address these information gaps, we suggest that CalRecycle:

• Conduct periodic discussion sessions focused on related topics, modeled on those conducted with local governments for SB 1383 organics legislation, but also covering industry stakeholder information needs.

• Include descriptive, explanatory information in the report that goes beyond that currently provided on CalRecycle websites, such as:

o Comparing and contrasting SB 343 and SB 54 recyclability provisions

o Compliance summaries explaining when and how each law's requirements may be monitored or enforced, and by who.

o Generic examples of the types of actions needed to comply under different circumstances.

o Hypothetical case study examples illustrating these points.

• Clarify the "potentially recyclable" terminology CalRecycle has used to describe materials satisfying SB 343 recyclable criteria and appearing on the SB 54 recyclable list. Specifically, highlight the full range of recyclability criteria producers must satisfy and responsibilities for documenting this, including for example:

o To use recyclable labeling, chasing arrows and other marketing claims under SB 343:

■ Routine use as feedstock in production of new products or packaging under PRC Section 42255.51(d)(1)

■ Reclaimed in accordance with Basel Agreement under PRC Section 42355.51(d)(2)(B)(ii)

■ Design for recycling and material/chemical composition criteria

under PRC Section 42355.51(d)(3)

o To comply with the SB 54 recyclability mandate, describe when and how the requirement that "to be considered recycled, covered material shall be sent to a responsible end market" under PRC Section 42041(aa)(3) will be enforced.

• Highlight and explain the alternative pathways to achieve recyclability under SB 343 and SB 54, including:

o Under SB 343, achieving a 75 percent recycling rate as defined under PRC Section 42355.51(d)(4); achieving a high recycling rate (60% before January 1, 2030, and 75% after this date) outside of local programs with sufficient material value under PRC Section 42355.51(d)(5); and compliance with a state/federal law under PRC Section 42355.51(d)(6).

o Under SB 54, being identified by CalRecycle as trending towards compliance with specified SB 343 recyclability criteria under PRC Section 42061(a)(3)(B).

4. Consider Revisions to Strengthen the Study Methodology.

4A. Increase alignment of SB 343 and SB 54 material categories and simplify CalRecycle's methodology for using SB 343 study findings to support SB 54 recyclable determinations.

There are numerous discrepancies between the 91 material type and form categories analyzed in the SB 343 study and the 98 covered material categories (CMC) currently defined under SB 54 and analyzed in the recent report to the legislature and used for the initial recyclable list, both published on December 28, 2023. We were unable to discern how some findings in these SB 54 publications were derived from the SB 343 Preliminary Findings (see examples in comment 4B below).

We recognize the challenges involved in fully harmonizing the two category systems. However, as the CMC list is finalized it may be most efficient to adjust SB 343 categories so that more categories directly map to those used under SB 54. We believe this approach could help to simplify CalRecycle's adjustment methodology and description of its use as we suggest under comment 3A above.

We would welcome the opportunity to discuss this further with CalRecycle and to provide suggestions if CalRecycle chooses to take this approach.

4B. Validate draft findings through comparisons to established data sources.

We suggest CalRecycle validate key preliminary findings prior to their release to identify any needs for additional scrutiny, data review, and/or revised calculations. This can be done through internal quality control reviews that include, where possible, comparing draft findings with reputable recycling industry data sources.

This will help CalRecycle to strengthen the veracity and acceptance of published findings, and to prepare to respond to public questions. Validation is especially important for findings that appear to be at odds with accepted recycling industry data sources, or that CalRecycle expects will be scrutinized closely for other reasons (e.g., where a material type and form comes close, but does not quite, satisfy recyclable criteria).

The Recycling Partnership Can Provide Data to Support These Efforts

The Partnership is dedicated to data-driven advancements in recycling systems, and we welcome the opportunity to compare notes and share data and insights with CalRecycle. In addition to other established recycling industry data sources, the Partnership's National Database can be tapped for CalRecycle comparison with draft findings in future studies.

We aim to align our National Database with state systems such as California SB 343 and SB 54 to best support industry compliance as well as state oversight needs.

Currently our access to curbside recycling services data is relatively consistent with CalRecycle's data, although there are some differences that may sometimes complicate direct comparisons (e.g., categories used or the fact that our percentages are based on households and not population). And, while we don't currently maintain the comprehensive MRF data needed to calculate comparable "sorting for recycling" metrics, we are continually adding new MRF and recycling system data through our continuing engagement with facility operators and communities. The National Database guides and benefits from our ongoing funding and support initiatives related to strengthening recycling systems, including through three industry coalitions targeting recycling system expansion and compliance strategies for PET thermoforms, polypropylene, and film and flexibles, where we have supported material recovery and recycling through grants and technical support at California MRFs and reclaimers.

In this context, we highlight below a few categories as examples. For easy reference, we copied some select findings from the SB 343 Preliminary Findings report and the SB 54 Report to Legislature in Appendix 1.

• Tin/Steel Cans and Lids - CalRecycle found 95% of Californians have access to curbside recycling for this category, consistent with the Partnership's estimate of 98%. But CalRecycle also found that processors sorting this category for recycling serve only 33% of counties. This poor assessment of tin/steel can recyclability is perhaps the most surprising of CalRecycle's Preliminary Findings. Although we don't have comprehensive data on California MRF practices, our experience strongly suggests that this CalRecycle finding should be revisited. Most, if not all, of the MRFs we have worked with employ magnets to sort these materials into defined streams, and successfully ship them to well-established markets.

• Polypropylene (PP) - Polypropylene recyclability has received significant attention and debate in California. Partnership data supports CalRecycle's findings, but we were unable to discern CalRecycle's methodology for calculating the findings presented in the SB 54 Report to Legislature as shown in Appendix A.

• Cartons - The recyclability of Cartons has also been questioned by some stakeholders in California. The SB 343 Preliminary Findings show that aseptic containers have an access rate of 53% and gable top cartons have an access rate of 55%. In contrast, Partnership data indicates that 62% of California households have access to recycle gable-top and aseptic cartons through curbside collection programs, exceeding the required threshold. We do not understand why the access rates for the two carton categories were adjusted downward in the SB 54 Report to legislature, as shown in Appendix A as the categories appear to be defined consistently in the two systems.

• PET Thermoforms - This is another category for which recyclability has been a subject of debate in California. CalRecycle estimated that curbside access for PET thermoforms is 84% in the SB 343 Preliminary Findings and, as shown in Appendix A, 82% for a

more broadly defined category in the SB 54 Report to Legislature. The Partnership's National Database access data are consistent with these access estimates, showing 86% for PET tubs and 83% for PET cups.

• Film and Flexibles - Partnership data supports CalRecycle's assessment that several film and flexibles categories do not satisfy the SB 343 access to curbside recycling criteria. As shown in Appendix A, this includes the three categories of Films - Plastic Bags and two categories of Films - Non-Plastic Bags in the SB 343 Preliminary Findings with access rates between 11%-30%. And it also includes the seven covered material categories of Flexible and Film Items and two categories of clear non-bag film in the SB 54 Report to Legislature with access estimates of 6-30%. Actually, the Partnership access estimate of 8 percent is lower than CalRecycle's estimates for all but the LDPE Clear Non-Bag Film category at 6%. Again, we were not able to discern how the relatively granular SB 54 recyclability assessments were derived from the broader SB 343 findings.

The data we have provided here are examples of input that can be used in the validation of SB 343 research and is in line with our suggestions above that CalRecycle actively seek outside data inputs to the SB 343 process. The Recycling Partnership stands ready to provide this kind of data to assist CalRecycle in producing highly vetted study results.

4C. Consider adjusting the methodology for evaluating the "sorting for recycling" criterion.

Appendix B details some Partnership concerns and suggestions related to CalRecycle's methodology for evaluating whether the "sorting for recycling" criterion was satisfied.

Again, we acknowledge the challenges inherent in navigating the complex statutory requirements. We offer these constructive critiques and suggestions to help you establish a strong template for future studies that builds on the foundation established in the Preliminary Findings report.

APPENDIX A
Select Findings from the SB 343 Preliminary Findings Report and SB 54 Report to Legislature

Because of the pressing need to try to align SB 343 and SB 54 findings, we present the table below to illustrate the kinds of comparative framework that could facilitate harmonization.

Appendix A Footnotes:
1 From SB 343 Material Characterization Study Preliminary Findings, Table 1.
2 From SB 343 Material Characterization Study Preliminary Findings, Table 2.
3 Data on this Material Type and Form is included in SB 343 Preliminary Findings Table 1 but not Table 2.
4 From Recyclability Status of Covered Material Categories, SB 54 Report to the Legislature, Table 2.

5 The SB 343 Preliminary Findings report does not include a corresponding category equivalent to that shown for the SB 54 Report to Legislature.
6 The SB 54 Report to Legislature does not include a corresponding category equivalent to that shown for the SB 343 Preliminary Findings report

APPENDIX B
Detailed Methodology Concerns and Suggestions Related to the "Sorting for Recycling" Criterion

Comment 109:
Name: George Savage, P.E.
Date received: 4/2/2024
Source: Email (gsavageg@gmail.com)
Attachments: No
Comment: Dear CalRecycle:
I have the following comments regarding SB 343 Material Characterization Study--Preliminary Findings. I find the report conspicuously lacking in terms of some important details given that one consequence of the following quote could be regulations and legal enforcement,

"Information provided in this report may be utilized to evaluate if materials meet criteria to be labeled or marketed as recyclable established in the Public Resources Code (PRC) sections 42355.51(d)(A) and 42355.51(d)(2)(B)(i).

Comments:

1. What is the name and location of the contractor cited on pages 7 and 8? Did this contractor employ subcontractors to perform visual, hand, or both characterizations? Searching the document only returns results for “contractor” on those two pages as far as I could determine.

2.Was a separate report or reports of field sampling, hand-sorting, and visual characterization performed to support the “Preliminary Findings in the “staff report”? If so, was the work performed by a contractor(s) under contract to CalRecycle, when and by whom? If a separate report, then that report of field results needs to be referenced conspicuously in the Prelim Findings and Final Findings and that separate report needs to be made available in a timely manner to the public online or by another convenient, timely method of public access.

3. What standardized, consensus test methods were used for selecting a representative weight of sample for hand sorting? If none, then the methods and author of them needs to be described in detail in the Final Report or else the report is incomplete.

4. What standardized consensus test methods were used for selecting a representative weight of sample for visual characterization of composition? If none, then the methods need to be described in detail in the Final Report or else the report is incomplete.

5. Who “determined” and using what methods and procedures and author(s), i.e., (Page 8) “The weight of the sample was determined by material type and outflow, such that samples of highly homogenous or high-density outflows were allocated lower sample weight.” As the text of the Prelim Findings stands now, the reader cannot make an informed analysis and determination as to who determined the weights used and the basis(bases) and adequacy of the chosen sample weights for each material type and outflow. A table of the average weight or range of weights for each material type and outflow as a standalone table or incorporated into the existing table(s).

6. Tables, graphics, and text of data should clearly report the number of samples and the error at 90% or 95% level of confidence for each average composition value reported. I could not find information or data in the report that specifies the precision of the measurements of composition. The report is incomplete without precision data. If I missed something, please let me know. Searching for “error”, “precision”, “confidence” in the Prelim Findings report did not return any results.

7. A listing of all comments submitted to CalRecycle should be include in an appendix of CalRecycle’s “Final Report”.

8. If I have to file a Public Document Request to obtain any of the information, background, or reports as a result of my comments, then please let me know at your earliest convenience.

Comment 110:
Name: Melissa Koshlaychuk
Date received: 4/2/2024
Source: Email (mkoshlaychuk@calstrawberry.org)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment:
Dear Interim Director Mindy McIntyre,
On behalf of California strawberry farmers, shippers, and processors, the California Strawberry Commission (CSC) is pleased to respond to the CalRecycle request for comments on the December 28, 2023, SB343 Preliminary Material Characterization Study 2023-2024 Findings. Please find attached our comment letter.
Regards,
Melissa Koshlaychuk

Melissa Koshlaychuk
Public Policy Analyst
California Strawberry Commission
916-841-3789 | mkoshlaychuk@calstrawberry.org

Attachment Text: April 2, 2024
Mindy McIntyre
Interim Director, CalRecycle
1001 I Street

Sacramento, CA 95814
Submitted via required email: wastechar@calrecycle.ca.gov
RE: SB 343 Preliminary Findings

Dear Interim Director Mindy McIntyre,

On behalf of California strawberry farmers, shippers, and processors, the California Strawberry Commission(CSC)is pleased to respond to the CalRecycle request for comments on the December 28, 2023 SB343 Preliminary Material Characterization Study 2023-2024 Findings, which we will refer to as the Recyclability Report herein.

We agree with the Department's Recyclability Report that PET clamshell packaging used for berries meets the recyclability criteria established by SB 343. This is consistent with the history of PET clamshell recycling efforts.

As early adopters of recycling it has long been common for California berry clamshells to contain considerable post-consumer recycled (PCR) content (e.g. 60% PCR in 2023). Since inventing the PET clamshell in the 1990's the package has been optimized, light-weighted, and implemented the Association of Plastic Recyclers (APR) guidelines to ensure that the PET clamshell is 100% recyclable.

Additionally, the state's material recovery facilities (MRFs) have been sorting PET bottles and PET thermoforms as part of compliance with the California Beverage Container Recycling and Litter Reduction Act, (AB 2020) for decades. Since the berry clamshell is made from PET, it is recycled using the same technology as PET beverage containers and is incorporated into state recycling programs as part of the curbside collection programs and comingled with PET beverage containers.[1]

In the fall of 2023, the California Strawberry Commission performed an analysis of published data and independently found that PET clamshell packaging used for berries meets the recyclability criteria established by SB 343.

The following is a summary of our analysis and findings.

CalRecycle's SB343 Material Characterization Study Preliminary Findings Report December 2023[2]

Material Accepted by Recycling Programs

In accordance with SB343 statute language, "Section 5. 42355.51(d)(2)(A) The material type and form is collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60 percent of the population of the state." CalRecycle's Recyclability Report states in Table 1 (p.12) that 84% of the statewide population accepts PET thermoforms for recycling, therefore PET thermoform clamshells meet this requirement. Our analysis reaffirms this finding as we determined that at least 76% of the state's population[3,4] is served by recycling programs that request consumers put PET thermoform clamshells into the recycling bin.

Our analysis of the SB 343 collection for recycling requirement Section 5. 42355.51(d)(2)(A) utilized CalRecycle's list of Recycling Programs, publicly published guidance documents for each of the recycling programs, and phone call verification with a representative for the recycling program (performed September 4th through November 10th, 2023).

Materials Recovered by Large Volume Transfer/Processors

Similarly, in accordance with statute language for SB 343, "Section 5. 42355.51(d)(2)(B)(i) The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020, that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention." CalRecycle's Recyclability Report states in Table 2 (p.18) that 100% of the Large Volume Transfer Processors (LVTPs) surveyed population (30 of the 58 counties, or 88.53% of the state's population) accept PET thermoformed clamshells[5]. The following figures from CalRecycle's February 13th, 2024, public informal session presentation[6] offer a visual representation of these findings.

Our analysis (shown in Appendix) of recycling programs in counties served by LVTPs estimated that at least 66% of California's recycling programs that are served by LVTPs that sort PET thermoform clamshells for recycling purposes. Supported by our findings, the assumptions made in the preliminary findings report appendix 7 are false for PET thermoforms.

In short, we agree with CalRecycle's determination that the CMC (Category ID P3P) "PET (#1) – Thermoformed containers, cups, Lids, Plates, Trays, Tubs" is one of the 42 CMC's that is "recovered by LVTPs that collectively service at least 60 percent of recycling programs in California"[7] (p.5).

Figure 1. CalRecycle Feb 2024 Presentation Slide 21

Figure 2.CalRecycle Feb 2024 Presentation Slide 36

While we look forward to providing separate comments directly for CalRecycle's SB54 proposed regulatory language later this year, we would like to offer comments on CalRecycle's SB54 Report to the Legislature December 2023 at this time as it helps further clarify the findings of the SB 343 Material Characterization Study Preliminary Findings report published December 2023.

The SB54 Report to Legislature December 2023 Table 2 provides the percentage of surveyed counties served by material recovery facilities(MRFs)recovering the CMC (Category ID P3P) "PET (#1) – Thermoformed containers, cups, Lids, Plates, Trays, Tubs" is 100%. This is based on current, existing, known, and available information which includes 27 of the 50 facilities surveyed. The 27 facilities surveyed encompass 30 of the state's 58 total counties. This report also states that 37 of the 98 CMCs meet both

criteria established in 423551(d)(2)[8] (p.5), and we are pleased to have confirmation, according to this report, that PET thermoforms are one of those 37 CMCs.

In closing, it is important that PET thermoform clamshells continue to be collected in recycling programs as established in the California Beverage Container Recycling and Litter Reduction Act, (AB 2020).We are encouraged that only plastic packaging with the chasing arrows symbol will be allowed into the blue bins, as this will improve recycling rates by working towards eradicating the non-recyclable contaminants in the recycling stream. Berry farmers are proud of these accomplishments and request the Department's assistance to maintain and increase our recycling efforts. Thank you for your time and consideration. Please contact us if you have any questions.

Respectfully submitted,

Rick Tomlinson, President

Appendix

California Strawberry Commission's Analysis and Summary of Selected Curbside Recycling Programs and Total High Volume Processing Facilities in the Region that Publicly Report Collection and Sorting of PET Thermoform Clamshells for Recycling Purposes

First, we reviewed CalRecycle data to verify that PET thermoform clamshells are "collected for recycling by recycling programs for jurisdictions that collectively encompass 60 percent of the population of the state." Then we reviewed CalRecycle data on high (large) volume processing facilities that serve at least 60% of recycling programs statewide. The results are summarized in Table 1 and our methodology is described below.

Table 1. Summary of Selected Curbside Recycling Programs and Total High Volume Processing Facilities in the Region that Publicly Report Collection and Sorting of PET Thermoform Clamshells for Recycling Purposes.

References: 1 - https://www.california-demographics.com/counties_by_population. 2 - https://www2.calrecycle.ca.gov/BevContainer/CertifiedPrograms/Curbside/. 3 -

https://www2.calrecycle.ca.gov/Contracts/Advertisement/2115

*22 High Volume Processing Facilities Serve San Diego Basin.

Analysis Process

Our analysis was conducted in September through November of 2023. We began with a list of Recycling Programs published on CalRecycle's website. We then reviewed the publicly published guidance of each of the recycling programs to confirm they advise consumers to put PET thermoform clamshells into the recycling bin. To ensure the published information was up to date, we called each recycling program and verified

with a representative that their recycling program advises consumers to put PET thermoform clamshells into the recycling bin. We discontinued the validation survey after confirming the above with recycling programs for jurisdictions that collectively encompass 76% of the population of the state[9,10].

We then reviewed a list of high-volume processing facilities that CalRecycle published on March 27, 2023, as part of a Request for Proposal[11], to gather data on whether a product or packaging is collected and processed for recycling as required by SB343. We then identified the high-volume processing facilities from the list located in the same counties as the above referenced Recycling Programs that advise consumers to place PET thermoform clamshells into the recycling bin. This resulted in an estimated 66% of the state's recycling programs being served by large volume transfer or processing facilities that sort PET thermoform clamshells for recycling purposes.

Footnotes:
1 California Beverage Container Recycling and Litter Reduction Act, Chapter 2, §14506.5
2 SB 343 Material Characterization Preliminary Findings Report (d12v9rtnomnebu.cloudfront.net)
3 https://www.california-demographics.com/counties_by_population
4 https://www2.calrecycle.ca.gov/BevContainer/CertifiedPrograms/Curbside/
5 https://d12v9rtnomnebu.cloudfront.net/diveimages/FINAL_343_Preliminary_Report.pdf
6 https://calrecycle.ca.gov/wcs/recyclinglabels/
7 SB 343 Material Characterization Preliminary Findings Report (d12v9rtnomnebu.cloudfront.net)
8 https://www2.calrecycle.ca.gov/Publications/Details/1730
9 https://www.california-demographics.com/counties_by_population
10 https://www2.calrecycle.ca.gov/BevContainer/CertifiedPrograms/Curbside/
11 https://www2.calrecycle.ca.gov/Contracts/Advertisement/2115

Comment 111:
Name: Cheryl Auger
Date received: 4/2/2024
Source: Email (augercaa@gmail.com)
Attachments: No
Comment: Dear Waste Characterization Team,
I know that PET and HDPE items are recyclable with caveats, but after reading a lot of the documentation and supporting evidence the MRFs, Post Consumer Recycle Facilities and waste brokers weren't successful at meeting the mandated recycling percentages to be considered recyclable in the state of CA per SB 343 and as a result 276 thousand bales of contaminated plastic were sent to Mexico and non-OECD Countries.

1. With 10 post consumer processing facilities in the Western U.S. (2 HDPE and 8 PET) It is clear we do not have the infrastructure to meet this challenge and it is more clear there is no recycling facility for PP.

2. It is also clear that haulers are trying to hide the details of the mixed plastic hidden in their PET and HDPE bales directly, not complying with AB 881 and the mission to not export mixed waste to other countries to shoulder the burden of our waste.

3. Of the 109,276 bales of plastic wastes to non-OECD countries and 166,423 bales of plastic wastes to Mexico, all of the bales were found to be contaminated above the 2 to 5% based on the receiving Country maximums.

4. And while PET Thermoforms are not recyclable they are clearly baled with rigid PET and other bottles for export. PET thermoform packaging includes clamshells, cups, tubs, lids, boxes, trays, and egg cartons.

Recommendations:
1. Landfill all plastic that we know is not recyclable to take it out of the recycling stream. This would be everything other than rigid PET and HDPE bottles and jugs. If there are no post consumer recycling facilities in the Western US, then that material should be locally diverted to a CA landfill.

2.If a PCR recycles PP we need to get evidence and document this PCR for future verification and audits, otherwise we should landfill PP locally.

3 We should require actual manifests for every MRF that sends plastic bales to any US and foreign post consumer material facility that includes number of bales, presence of contamination, type of contamination and receiving facility and maybe attestation.

4.Recycled definition should be changed from recycling to downcycling so that people are aware of the virgin pellets used in PCR processing.The virgin pellet consumption per PC pellets should be documented.

5. Since we have actual waste numbers by form and type we should use those instead of numbers from a waste characterization study.

6. Sorting machines should be required to improve sorting to focus on resin and forms that are recyclable. Now some facilities sort on Resin #1 and that is too large of a catch-all for contamination.

7. The state uses its 75% solid waste “diversion” goal as its recycling rate regardless of what actually happens to the waste. This is just a wrong measurement and needs to be changed so that CA is taken accountability for our waste. We should have real numbers here. How much are we recycling by form and type and this should be transparent and posted on CalRecycles website. If the DoE states that only 5% of plastics have been recycled over time, we shouldn't misrepresent that we are 75% recycling by shipping our waste to other countries. We need accurate accounting and reporting.

8. More oversight of brokers needs to occur. There should be clear origin of supplier, resin and form, contamination rate, and PCR or other recipient as applicable. They seem to be a black box in the system as are probably many empty ships returning to non-OECD countries.

Sincerely,
Cheryl Auger
President, Ban SUP(Single Use Plastic)
--
Cheryl Auger
www.myzerowastestore.com

Comment 112:
Name: Annalee Akin Augustine
Date received: 4/2/2024
Source: Email (AAugustine@caladvocates.com)
Attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Good afternoon,
On behalf of Consumer Brands Association and the organizations listed below, please find two documents attached here as public comment on the SB 343 Preliminary Findings Report.
1. Consumer Brands Association Comment to Cal Recycle SB 343
2. Coalition Comment to Cal Recycle SB 343

Agricultural Council of California
American Chemistry Council
AMERIPEN
California Chamber of Commerce
California Grocers Association
California League of Food Producers
California Manufacturers & Technology Association
Consumer Brands Association
Dairy Institute of California
Flexible Packaging Association
Household & Commercial Products Association
Personal Care Products Council
The Toy Association

We appreciate your time and attention.
Please do not hesitate to reach out to myself or John Hewitt, Vice President, Packaging Sustainability, Consumer Brands Association, cc'd here at jhewitt@consumerbrandsassociation.org, if there are any questions.

Thank you, Annalee

Annalee Akin Augustine
Legislative Advocate
California Advocates, Inc.
1112 11th Street
Sacramento, CA 95814
(916) 441-5050 (office)

Attachment text: April 1, 2024
Ms. Krystal Acierto
Acting Director of CalRecycle
Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025
Via email to wastechar@calrecycle.ca.gov.
Re: California Senate Bill 343 Preliminary Findings Report

Dear Ms. Acierto,

Consumer Brands Association (“Consumer Brands”) and the undersigned entities (the “Coalition”) are appreciative of the opportunity to submit comments regarding the California’s Department of Resources Recycling and Recovery’s (“CalRecycle”) December 28, 2023 published draft of its preliminary findings detailing which materials are commonly collected, sorted, sold, or transferred for recycling in California (“Preliminary Findings Report” or “Report”). Consumer Brands thanks CalRecycle for its extension of the public comment period to April 2, 2024.

Consumer Brands champions the industry whose products Americans depend on every day, representing more than 2,000 iconic brands. From household and personal care products to food and beverage products, the consumer-packaged goods (“CPG”) industry plays a vital role in powering the U.S. economy, contributing $2 trillion to the U.S. GDP and supporting more than 20 million American jobs. The CPG industry also plays a crucial role in creating a more sustainable future through its products and has prioritized packaging and recycling innovation. All of the 25 largest CPG companies in the United States have made commitments to increasing recyclable content, source reduction, or reuse of material. Eighty percent of those companies are working toward introducing fully recyclable packaging for all of their products by 2030 at the latest.

The Coalition represents virtually all aspects of the packaging value chain and some of the most integral stakeholders in the work that CalRecycle is undertaking to increase recycling in California. CalRecycle’s efforts are likely to have a significant impact, not only on California itself, but also on national recycling and sustainability practices due to the state’s importance.

The purpose of the Preliminary Findings Report is to provide the regulated community and the public with information to evaluate whether a product or package is recyclable in California as established by Senate Bill 343 (SB 343) [Allen, Chapter 507, Statutes of 2021]. SB 343 aims to supply consumers with accurate information about what is and is not recyclable in California, ultimately helping consumers make more informed choices when it comes to purchasing products and providing guidance on the correct method of disposal or recycling at the end of the product’s life. The Coalition’s members are leading proponents of this goal, and we continually dedicate significant resources to its achievement. For example, Consumer Brands and The Recycling Partnership have collaborated to provide consumers with up-to-date, localized recycling instructions directly on product packaging through SmartLabel, Consumer Brands’ digital QR code

labeling platform. The integration of recycling instructions into SmartLabel in this transparent format informs and empowers consumers, while simultaneously encouraging proper end-of-life procedures for packaging — leading to less contamination in waste streams and increased recovery of valuable recycled materials.

Given the significance of SB 343 and our shared goals of empowering consumers to effectively participate in the system, promoting business innovation, and supporting circularity, Coalition members have closely engaged with this law since the legislation's introduction. We remain committed to providing feedback which supports and informs the implementation of SB 343, and the achievement of goals expressed within. To do so, the Coalition submitted an initial set of clarifying questions on the SB 343 Preliminary Findings Report which requested information absent from the published Report results. We maintain that these information gaps inhibit holistic stakeholder engagement throughout the SB 343 implementation process. In addition to the need for a publicized response to the previously contributed questions, the Coalition urges CalRecycle to strengthen the underlying data informing its Preliminary Findings Report and to provide stakeholders with a more comprehensive and unambiguous picture of recyclability in California under SB 343.

1. CalRecycle's Final Material Characterization Study Provides Insufficient Clarity on the Recyclability of All Material Types Studied

The stated intent of the Preliminary Findings Report is to provide the public and the regulated community with information to identify whether a product or package is recyclable in California. However, CalRecycle's preliminary Report on recyclability under SB 343 provides only raw data regarding the sampling and sorting conducted at facilities by a CalRecycle contractor. CalRecycle's preliminary report on material characterization contains valuable information on the materials studied to date, but its current format, technical language, and lack of clear guidance create a barrier for businesses and the public. Currently, businesses struggle to determine which materials are deemed recyclable under SB 343 due to the report's lack of clarity. This confusion will hinder compliance efforts.

While SB 343 exempts CalRecycle from the Administrative Procedure Act (the "APA")[1], in conducting its study of materials, CalRecycle should adhere to the Clarity Standard of the APA in preparing the final report. In other words, CalRecycle should draft the report in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style.[2]

The final report should clearly and precisely identify those material types that may be considered "recyclable" in California, including which material types and forms are (1) collected for recycling by jurisdiction recycling programs that encompass at least 60 percent of the population of the state; and (2) sorted into defined streams for recycling processes by large volume transfer/processing facilities that collectively serve at least 60 percent of recycling programs statewide with defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention. We recognize that CalRecycle will not address the statutory criteria relating to PFAS and

inks, adhesives, or other components that could prevent recyclability. The report, however, should clearly address those criteria that the legislature directed CalRecycle to address. In particular, the final report should provide a definitive answer for each of the 89 material categories: is it potentially recyclable, assuming it meets the remaining criteria in the statute?

It is critical for the Report to clearly identify whether each material meets the statutory criteria that CalRecycle was directed to address. This is necessary to achieve the express requirements of the SB 343 statute, to provide clear criteria for businesses to apply to their material types and to determine whether a recyclable claim may be made. The SB 54 report to the legislature includes much more definitive and instructional summary language, specifically on pages one and nine, which identify those material types that are “potentially recyclable.” The Coalition urges CalRecycle to similarly include information in the final Report that clearly addresses whether each material type meets the specific criteria established by SB 343 that the Report is intended to evaluate.

a. Language and Definitions Leave Essential Technical Elements Open to Interpretation

The SB 343 Preliminary Findings Report creates a number of uncertainties and uses technical language that companies must interpret to determine compliance, all of which contributes to a substantial lack of clarity. For example, multiple categories for “single use” and “multi use” are defined within the Preliminary Findings Report using the term “durable.” Yet “durable” is a descriptor with no concrete standards for its achievement delineated within the Report. Similar challenges recur throughout the Report terminology and definitions. Fiber category F01 is titled “uncoated corrugated cardboard,” though its definition explicitly permits “glossy coating.” However, the Report does not enumerate what constitutes a “glossy coating,” inhibiting compliance. The Report also appears to conflate “multilayer” and “multimaterial.” In regard to packaging formats, the terms are not always interchangeable and explicit notation of how CalRecycle differentiates or relates the two terms within the report is necessary for clarity. At minimum, each material type should be defined using language that aligns with real-world practices and is comprehensible to consumers and the regulated community within California.

Additionally, the Preliminary Findings Report includes the phrase “material that cannot be clearly identified as single use vs. multi-use” which is nebulous and complicates the specific categorization of packaging. It leaves uncertainty regarding how these materials will be categorized; is identification dependent on producer intent when placed on market? This question of categorization is also present in the Report’s differentiation between types of HDPE buckets. The Preliminary Findings Report separates HDPE Buckets into “Food” and “Non-Food.” These two material types and form categories are nearly identical yet are classified differently within the Report for recycling purposes. For example, HDPE Food Buckets are listed in Appendix 6 as non-recyclable, while HDPE Non-Food Buckets are noted in Appendix 7 as having 76% access to recycling. Given the limited feasibility of distinguishing between the “Food” and “Non-Food” HDPE Buckets post-processing, we recommend CalRecycle express whether the governing factor for categorization is intent when placed on the market, or another criterion.

Finally, ambiguity exists regarding the composition of categories including the designation of “other,” such as “P20P PP (#5) – Other Rigid Items.” It would support stakeholder understanding and compliance with SB 343 requirements to have additional information expressing what the designation of “other” within the Preliminary Findings Report encompasses. Clear guidance will facilitate smoother implementation, enabling manufacturers to adhere to the rules with greater efficiency.

b. Labeling Requirements for Multi-material Packaging Material Types and Forms Unclear

The published Report does not provide adequate specificity to inform compliance regarding the use of the chasing arrows symbol in a How2Recycle label on a variety of multi-material packaging material types and forms. For example, at present it is unclear if use of the chasing arrow symbol within a How2Recycle label would be prohibited on a small closure that is customarily recycled with a bottle, such as a cap. The PP closure for a HDPE beverage container is commonly recyclable when attached to the bottle. This leaves uncertainty for compliance regarding whether the beverage container closure would be allowed to have a chasing arrows symbol, or whether the symbol would need to be revised or removed. At present, the Preliminary Findings Report does not provide clear direction as to whether the chasing arrows symbol on a small closure packaging material would be permissible if the closure is customarily recycled with the packaging. This sort of gap in instruction is inhibitory to compliance.

CalRecycle has also provided no guidance to the regulated community or to the public on how companies can communicate recycling instructions to consumers using existing programs. Programs to improve consumer clarity and end of life for products by providing consumers with on pack recycling instructions already exist. How2Recycle is a commonly utilized, valuable label that communicates recycling instructions to the public based on reliable, national recycling data. The national data from which How2Recycle makes its determinations take into account all factors referenced by the SB 343 Preliminary Findings Report, such as accessibility to collection and sortation capabilities. The How2Recycle logo is widely used and eliminating its use would erode consumer trust in recycling instructions and likely result in increased contamination. CalRecycle has not released guidance for how the SB 343 chasing arrows ban will apply to multimaterial components that utilize a How2Recycle label. For example, in many cases the HDPE bottle and polypropylene closure have a How2Recycle label which instructs consumers to recycle the materials together (with the cap attached to the bottle). Both components are widely recycled and considered recyclable by the How2Recycle program, yet it is unclear whether under SB 343 the bottle would still be able to have the How2Recycle logo. An additional circumstance in which this problem exists is multimaterial components where the closure is not considered recyclable according to SB 343. Prohibiting a How2Recycle label that directs consumers to separate the components in order to recycle the bottle may result in reduced consumer clarity and a loss of valuable recyclable material. This lack of clarity is applicable to other material types and forms as well, to include HDPE bottles with multi-material closures.

c. Limited Dimensional Guidance for Small Materials

The Report provides inadequate information on small material size requirements for industry to comply with, and for consumers to understand which of their small products can be recycled. The industry accepted dimensional protocol for small materials is established by the APR standard, which sets a minimum of greater than 2” for each dimension of a product, including height, width, and length.[3] Senate Bill 54 guidance defines small materials as having “no side greater than 2’ means having a side whose length, width, or height is no greater than 2”.[4] For flexible items, this is measured when the item is laid flat in a relaxed state”, which is inconsistent with the APR guidelines. While it is clear that SB 343 is ultimately not congruous with SB 54 or APR standards, the SB 343 Report does not provide additional guidance for the dimensions of small recyclable materials. The Coalition requests CalRecycle provide the public and regulated community with clarity on if SB 343 will uphold the widely accepted APR industry standard, the definition set forth by SB 54, or other criterion for its regulation of recyclable product dimensions.

Not only should CalRecycle ensure the Report can be understood by industry; the Report should also cater to a broader audience. A non-technical summary will benefit those without a recycling background, while a glossary defining technical terms (including “outflow” and “feedstock”) ensures all California residents can understand the content. Additionally, user- friendly features like explanatory text, flowcharts, and summaries will enhance comprehension. These changes will transform CalRecycle’s Report into a valuable resource for businesses and Californians alike. A clear and accessible Report will empower all stakeholders to participate effectively in California's recycling journey.

2. CalRecycle’s Material Characterization Study Fails to Provide Complete and Accurate Data

Limitations in study data both collected and reported publicly, leave uncertainty regarding whether the data gathered is sufficient to completely and accurately determine if each of the material types and forms studied is recyclable in California under the recyclability criteria set forth in SB 343. For example, the representativeness of the data used in CalRecycle’s Report on material characterization is crucial for drawing accurate conclusions about the state of recycling in California. Yet as drafted, CalRecycle’s study and final Report do not set forth, with actionable specificity, complete and accurate data sufficient to allow the public to decipher what materials are deemed recyclable in California. This information is also a crucial part of informing industry participants which packaging materials will be considered permissible and compliant according to the regulations. An examination of the produced data also generates concern regarding the thoroughness of the Report’s methodology. Below, we expand upon some of the specific areas in which improving the completeness or the reporting of the data underlying the Preliminary Findings Report is essential to its accuracy and industry compliance.

a. Data Collection on Material Types and Forms Collected for Recycling by Jurisdiction Recycling Programs

CalRecycle's methodology for identifying recyclable materials solely through "internet research" on individual jurisdictions raises concerns about accuracy and consistency. For example, websites may not be up-to-date or utilize clear language. The preliminary Report does not mention any verification process for the online information gathered. Additionally, standardizing diverse descriptions from various jurisdictions into CalRecycle's pre-defined list of 89 categories could lead to misclassification. Given the insufficient Report methodology, there are fundamental questions about the accuracy of the Report's result. The lack of accuracy poses substantial concerns around the long-term viability of SB 343 in providing adequate guidance for the regulated community, inherently undermining the ability of SB 343 to foster improved recycling outcomes. Here, California should encourage jurisdictions to adopt a standardized format for listing accepted recyclables on their websites. We encourage CalRecycle to update its methodology to improve accuracy and consistency.

b. Data Collection on Material Types and Forms that are Recovered by Large Volume Transfer/Processors (LVTPs) in California

CalRecycle's approach to characterizing materials recovered by Large Volume Transfer/Processors (LVTPs) poses several limitations. While targeting LVTPs with high processing capacity ensures that a sizeable portion of the state's recycling stream is represented, surveying 37 out of 50 identified LVTPs, and then selecting only 10 for hands-on sorting may not fully capture the diversity of practices across all facilities. Additionally, sampling only occurred in August 2023, which raises concern about seasonal variations in waste composition. Focusing on only 18 outflow categories is also unlikely to sufficiently capture the full range of materials processed by LVTPs.

The LVTP Material Characterization Study also states that "samples were spread out on a sorting table with a grate, allowing for materials smaller than two inches to fall through. Materials greater than two inches were sorted into 91 material categories based on Material Type and Form." The Report provides no specifications as to how technical elements of this sortation process were positioned or conducted. For instance, in order to reflect sortation at a Materials Recovery Facility, a screen set-up should simulate dynamic sortation conditions. This is necessary to effectively evaluate the movement of materials within recycling facilities, for example, whether a small plastic would correctly pass over an average sized glass screen as occurs within facilities. Information indicating whether these intricacies were applied or taken into account to inform an accurate sorting process study is not provided within the Report.

The Association of Plastic Recyclers developed a widely accepted industry standard, the "Evaluation of Size Sorting Potential for Articles with Two Dimensions less than Two Inches" ("Evaluation Protocol").[5] The Evaluation Protocol was specifically designed to determine whether a plastic article will correctly pass over a lab scale, average sized glass screen that performs similarly to that used in production facilities. The Coalition recommends that the Evaluation Protocol be considered in developing the methods

employed within the LVTP Material Characterization Study to promote accuracy, given its consistency with industry product standards. Additionally, if the method utilized to simulate sortation within the study determined a material capture rate (specifically the percentage of items remaining on the screen), CalRecycle should make this data publicly available to inform stakeholder feedback and industry packaging decisions.

Finally, the Report asserts that the LVTP "contractor ensured that sampled material was representative of the outflows of that facility, with sample weights ranging from 15 to 200 pounds." No additional information regarding the determination of whether a sample is "representative" is provided, leaving the factual conclusion of what a representative outflow was assumed to be uncertain. A legitimately representative outflow sample must consider potential variability over time, variability across different waste haulers, and variability as a result of differing sub-geographies within an individual service area. The Report currently contains no indication of whether the "representative" sample accurately reflects a depth and breadth of facility outflows.

c. Representative Sample of Recycling Programs Served by LVTPs

The Report relies upon a sample of LVTPs that serve a total of 30 counties in California, which represent 52% of counties in the state. The Coalition does not object to the use of a representative sample given the statute's express direction that CalRecycle should take a "representative sample of recycling programs in the state."[6] The Report, however, simply asserts that the survey of LVTPs is a representative sample. It does not explain why this is the case, nor does it expressly extrapolate the analysis to all counties in the state. The Report also does not explain how the percentage of counties served by LVTPs would be relevant to the statutory criteria related to the percentage of programs served by LVTPs. The Senate Bill 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act, however, uses this same dataset and the recyclability requirements established in SB 343 to conclude that 37 types of material are potentially recyclable in the state by assuming the sample data could be extrapolated to the state as a whole. The Coalition recommends that the final report delineate how the sample of counties complies with the statutory requirements and whether the 60% statutory criterion related to the percentage of programs served by LVTPs is met for each material.

Data limitations resulting from inadequate methodology utilized by the Report may skew its results and ultimately cause the misclassification of recyclable materials as non-recyclable. For example, the Tin/Steel Cans, Lids material type and form category is comprised of widely recyclable packaging materials. The Preliminary Findings Report collection data supports this; the data states that in California, Tin/Steel Cans, Lids are accepted for recycling by 95 percent of the population. Though this material type and form has a very high collection rate, Report data reflects a low percentage of surveyed counties sorting Tin/Steel Cans, Lids. Facilities can use magnets in sortation to recover this material type and form efficiently and accurately. The 33 percent data reported for surveyed counties sorting for Tin/Steel Cans, Lids is misrepresentative of the recoverability of these materials and either identifies a significant infrastructural gap in the sorting capabilities for California LVTPs or is informed by insufficient data. The irregular data reported for Tin/Steel Cans, Lids sorting may reflect that the sample

percentage of surveyed counties sorting data is not fully representative of the whole. The Coalition emphasizes the need for complete and accurate data, and requests that material types and forms, such as Tin/Steel Cans, Lids, with data irregularities are further examined for recyclability to prevent the loss of valuable recyclable materials.

The Coalition recommends that CalRecycle include a larger number of LVTPs in the surveys and hands-on sorting to improve generalizability. CalRecycle should also include a wider range of outflow categories to strengthen the characterization process and provide a more robust understanding of recycling practices at LVTPs. Additionally, we request that CalRecycle provide stakeholders with the fundamental information about the processes undertaken and results acquired of its LVTP Material Characterization Study enumerated above. Given the immense level of technical and operational nuance that will be needed in the eventual process, we urge CalRecycle to consider and work collaboratively with Coalition members and the regulated community on recycling practices and to ensure industry has understanding sufficient to operationalize compliance with the law.

3. The Report Utilizes Only Two of Several Tests for Recyclability Enumerated in SB 343 Legislation

The published SB 343 Preliminary Findings Report does not fully address the statutory criteria for recyclability that CalRecycle is directed to assess in the material characterization study. This leaves concern that materials which are in fact recyclable will lose any recyclability designation or claims, resulting in the likely diversion of these materials to landfills. This is a negative environmental outcome that would undermine millions of dollars of private and public investments to increase the collection and sortation of these materials. It would decrease the state's recycling rates—not increase them. The Coalition asks that CalRecycle address each of the statutory criteria for determining recyclability.

a. Report Inclusion of Basel Convention Requirements Set by the SB 343 Statute is Incomplete

The Report cites Section 42355.51(d)(2) of the Public Resources Code for the criteria used to determine whether a product or packaging may be considered recyclable, but it does not quote the complete language of the statute. Specifically, the provision's second criterion – related to large volume transfer or processing facilities that collectively serve at least 60 percent of recycling programs statewide

-- includes a requirement that the "defined streams [be] sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention."[7] The Report neglects to note this criterion and does not address it in any way: neither the term "Basel" nor the term "reclaim" is found in the Report. This omission undermines the usefulness of the Report. Businesses who need to comply with SB343 have no independent way to determine whether the material types and forms that the Report concludes meet the dual 60 percent requirements also meet the statute provision

concerning the Basel Convention. Without including information on consistency with the requirements of the Basel Convention, the Report does not serve its purpose.

That said, there is reason to believe that all defined streams from LVTPs are sent to and reclaimed at facilities consistent with the requirements of the Basel Convention. The United States is not party to the Basel Convention, and the Basel Convention has no application within the United States, so this provision can apply only to streams sent from California transfer/processing facilities to reclaiming facilities outside the U.S. The relevant category under the Basel Convention is called Y48, which encompasses non-hazardous plastic scrap or waste not covered by another Basel category. A party to the Basel Convention cannot receive shipments of wastes from a non-party (e.g., the U.S.) unless it has a bilateral agreement with the non-party (the U.S.) that meets certain criteria of the Basel Convention. Many countries have such agreements, including Canada and Mexico.

Mexico requires prior notice and consent to receive U.S. exports of non-hazardous plastic scrap and waste, including Basel listing Y48. Consent is provided by Mexico's Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT), the Mexican environmental agency. As for Canada, as the U.S. EPA notes:

"Under a U.S.-Canada bilateral arrangement established in 2020, transboundary movements of the non-hazardous plastic scrap and waste covered by Basel listing Y48 are not subject to prior notice and consent requirements when subject to transboundary movement between the two countries and destined for environmentally sound management in either country."[8]

Thus, these two close trading partners of the United States can and do receive defined streams from California-based LVTPs consistent with the requirements of the Basel Convention. In finalizing the Preliminary Findings Report, CalRecycle should include a determination that the defined streams from LVTPs that it has documented pursuant to PRC Section 42355.51(d)(2)(B)(i) are all sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention. Consistent with the purpose of the Report, such a determination will permit businesses to rely on the results of the final report in order to comply with SB 343.

b. Absence of Non-Curbside Collection Programs Addressed within the Statute in the Report

The following provision sets out an additional criterion under which a product or packaging may be deemed recyclable according to the SB 343 bill language, yet does not seem to be included in the Preliminary Findings Report:

"Before January 1, 2030, notwithstanding paragraphs (2) and (3), a product or packaging not collected pursuant to a curbside collection program is recyclable in the state if the non-curbside collection program recovers at least 60 percent of the product or packaging in the program and the material has sufficient commercial value to be marketed for recycling and be transported at the end of its useful life to a transfer,

processing, or recycling facility to be sorted and aggregated into defined streams by material type and form”[9]

The Coalition recommends that this, among other additional criterion for recyclability established within the statute yet not present in the Report, be addressed by CalRecycle in a manner in which the public can provide comment on the criterions application, such as within an amended draft report that is provided for public comment.

4. Data and Methodology Information Provided from Recyclability Tests Utilized within the Report is Insufficient

a. Limitations With Collection Test Methodology and Resulting Data

Of the two tests the Preliminary Findings Report does address, the Collection Test is defined by the wording “is the material type and form collected for recycling, by recycling programs for jurisdictions that collectively encompass at least 60% of the population of the state?”[10] The Report cites “desk-based research and a survey of recycling program jurisdictions” as its primary methodology supporting determinations made through this test. Some categories fail to qualify as recyclable as a result of this test, including widely recyclable materials such as aluminum. If collected, aluminum will be sorted to a recyclable grade and a previous CalRecycle analysis of aluminum recyclability, through its Senate Bill 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Covered Material Category List, identifies the majority of aluminum material formats as recyclable.[11] According to CalRecycle in reference to the SB 54 list, “These CMCs [Covered Material Category] generally consist of materials that have established and robust recyclable material markets;” SB 54 delineates aluminum as recyclable and with viable end markets.[12] However, within the SB 343 Preliminary Findings Report, CalRecycle appears to have concluded according to the Collection Test that only jurisdictions with “food and beverage cans” being collected qualified for aluminum recycling, and those that marked “Bimetal/Steel/Tin Metal cans” did not qualify. This determination seemingly contradicts existing recycling data, including CalRecycle’s own SB 54 Covered Material Category List.

b. Obscurity within Defined Streams Test

The second test utilized in the Report is whether “the material type and form sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020, that process materials and collectively serve[s] at least 60% of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention?”[13] The Preliminary Findings Report contains two sets of data on which CalRecycle appears to have determined test outcomes to be dependent.

Table 2 contains the results for the (1) percentage of the 30 counties served by the 37 LVTPs that have access to sorting, and (2) the percentage of that 30-county population served by 37 surveyed LVTPs that have access to sorting. However, Table 2 appears to

omit material categories present in other Tables throughout the Report. It is unclear if these omissions are a byproduct of the survey methodology utilizing an open-ended question as to what streams the facilities sort into, rather than determining whether the longer list of categories as enumerated by CalRecycle would be sorted into a defined stream at the facility- and if so, whether this can still accurately depict sortation. The Coalition also has underlying concerns regarding the ability of the qualifying categories utilized in the defined streams test to meet the requirement established by SB 343. It is unclear whether a standard of 60% sorting access for the 30 counties surveyed and/or the 30-county population served by the 37 surveyed LVTPs is sufficient to fulfill the "60% of recycling programs" threshold stipulated by SB 343. The Coalition recommends clarification regarding the above, as well as whether the intended purpose of Appendix 7 is to suggest that material types and forms with sorting access available to at least 60% of the overall California population would fulfill the "60% of recycling programs" requirement established by SB 343.

The Coalition requests that CalRecycle provide further data and methodology demonstrating its use of the recyclability tests expressed within SB 343, beyond the Collection and Defined Streams tests. As explained, the sole use of these two testing methods is inconsistent with the legislation and creates limitations in assigning recyclability. We recommend that CalRecycle reevaluate widely recyclable materials such as LDPE and aluminum according to the criterion established by tests within SB 343 that do not appear to have been considered within the Preliminary Findings Report.

5. Inclusion of Criteria Absent from SB 343 Legislation for Recyclability Testing Leads to Results Inconsistent with Existing Data

Documents acquired through the Consumer Brands Public Records Act request appear to indicate that "Appendix 6. List of Material Types and Forms not Classifiable as Sorted for Recycling within Large Volume Transfer Processor Material Characterization Study" (Appendix 6) within the Preliminary Findings Report was produced through the characterization study. CalRecycle's response includes the bullet point: "Report pages 97 - 99 (Appendix 6): This shows the types and forms found not to be sorted for recycling." This wording does not match the recyclability test delineated by the SB 343 language. The only text in SB 343 that would appear to be directly relevant to sorting is as follows:

"Is the material type and form sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020, that process materials and collectively serve at least 60% of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention?"[14]

By contrast, three criteria were cited as evaluated components in the SB 343 Preliminary Findings Report table in Appendix 6 for "sortability":

1. Rare Material (Rarely Observed in Study): Rare Material (Rarely Observed in Study) means that in total fewer than 10 pounds of this material were observed across all samples in the study, including defined streams and residual destined for disposal.

2. Low Recovery Rate (Rare Outside Residual): Low Recovery Rate (Rare Outside Residual) means that this material was more common in residual destined for disposal than in any defined stream.

3. Non- Recyclable Material (Organics and Hazardous Materials): Non-Recyclable Material (Organics and Hazardous Waste) means that the primary material is not intended for traditional recycling, but rather would optimally be destined for organics recycling or hazardous waste disposal.

These criteria do not clearly relate to the tests established by the SB 343 legislation. The language utilized within SB 343 creates a binary test, with the following two components: (1) whether facilities have a recyclable stream and (2) whether those facilities with recyclable streams cover 60% of recyclable programs. The Preliminary Findings Report methodology for “sortability” seemingly applies components beyond the scope of the test articulated within SB 343. This includes tests on sorting only in relation to the “rarity of the material”, and tests on the presence of a sorting efficiency criterion that does not exist within the law’s text.

There are several material categories that may be recyclable but are eliminated from being labeled as such due to the Report’s lack of continuity with the tests delineated by SB 343. This includes “LDPE Beverage Bottles”, which have a collection access rate of 94% as noted in the jurisdiction recycling access research. This category is listed as “rare outside residual” in Appendix 6, and thus appears to be considered not recyclable. LDPE beverage bottles are under deposit in the state of California, yet the rarity of sales of LDPE beverage bottles appears to have translated into LDPE beverage bottles being labelled as “not recyclable” by the tests in the draft Report, despite having recycling outlets and being included in the state deposit program.

6. The Report Diverges with California Recyclability Guidance and Contradicts California SB 54

a. Overlap and Contradiction of California SB 54 Recyclability Evaluations

Information provided in this Report may be utilized by CalRecycle to evaluate if materials meet criteria to be labelled or marketed as recyclable established in Public Resources Code (PRC) sections 42355.51(d)(A) and 42355.51(d)(2)(B)(i). Whether or not a packaging type or form meets the criteria to be labelled or marketed as “recyclable” in California will significantly impact the ability of California producer companies to meet their circularity goals, as well as the mandates contained in other state laws such as Senate Bill 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act [Allen, Chapter 75, Statutes 2022]. SB 343 will ultimately interplay with the California extended producer responsibility program established by Senate Bill 54 which also relates to the recyclability of products within California.

However, the SB 343 Preliminary Findings Report significantly diverges from the SB 54 Covered Materials Categories List, even though the definition of “recyclable” in SB 54 expressly cross- references and adopts the definition of “recyclable” in SB 343.

For example, the SB 54 Covered Materials Category List contains six categories for glass, all of which are designated as recyclable, while the SB 343 Preliminary Findings Report differentiates among nine separate glass categories. The names and descriptions of the categories also vary between the two reports. This further complicates compliance within the state given two separate sets of guidance for recyclability within regulations and no clear instruction expressing how the two programs will interface. Another example is present in the classification of HDPE Food Buckets and Non-Food Buckets within the Preliminary Findings Report. The SB 54 Covered Materials Category List classifies all HDPE pails & buckets, as well as other HDPE rigid items, as recyclable. In the SB 343 Report, HDPE Buckets are split into “Food” and “Non-Food,” where HDPE Food Buckets are labeled not recyclable, inconsistent with the SB 54 guidance.

Recyclability testing methods also apparently vary across the two processes. The SB 343 LVTP Material Characterization Study states that “samples were spread out on a sorting table with a grate, allowing for materials smaller than two inches to fall through. Materials greater than two inches were sorted into 91 material categories based on Material Type and Form.” This test seeks to achieve a nearly identical goal to the size test performed to determine recyclability within SB 54, yet outcomes appear to vary and no specified information on the test’s structure is provided. The Coalition requests that CalRecycle provide further detail to stakeholders to inform understanding of how the sortation exercise conducted in the SB 343 Preliminary Findings Report relates, if at all, to the definition of “Small – No Side greater than 2” that exists in the SB 54 Covered Material Category (CMC) List.[15]

Inconsistency across the California SB 343 and SB 54 regulations, especially in categorizing the recyclability of materials, significantly complicates compliance and clarity for consumers, and ultimately inhibits recycling outcomes. We recommend that CalRecycle publish information explaining how the two programs will interact and harmonizing the material categories as much as possible. This should be inclusive of how CalRecycle anticipates the final SB 343 Findings Report to integrate with the SB 54 Covered Materials Category List and how classifications that diverge across the two laws should be interpreted and complied with.

b. Discontinuity within Appendix 6 and California Beverage Container Recycling and Litter Reduction Act

The SB 343 Preliminary Findings Report includes several California Redemption Value (CRV) materials in its Appendix 6 classifications, which “displays all Material Types and Forms … which were not classified as sorted for recycling.” This includes items like CRV glass beverage containers and CRV HDPE clear beverage bottles. According to the California Business and Professions Code, beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (otherwise known as

CRV containers) are exempt from SB 343 requirements.[16] However, within Appendix 6 these materials are classified as non- recyclable. The exact same material types and forms that do not qualify as subject to the CRV program within the state are listed as recyclable in Appendix 7. For example, non-CRV glass beverage bottles and non-CRV HDPE clear beverage bottles are listed in Appendix 7 as having 89% sorting access. It is unclear why the non-CRV program materials with the exact same material types and forms would differ from CRV materials in their recyclability designation. It also appears counterintuitive that materials currently recyclable within the CRV program would be considered non-recyclable according to the Preliminary Findings Report. The Coalition requests clarification on the inclusion of CRV materials within the Preliminary Findings Report, as well as recommends the Reports' continuity with the existing California CRV program.

7. CalRecycle Should Work with Legislators to Increase Recycling Capabilities and Encourage Education

SB 343 will have a significant impact on companies distributing products and packaging throughout the United States. SB 343 presents challenges for businesses operating nationwide and removing the chasing arrows symbol may lead to unintended negative consequences in various jurisdictions across the nation. For example, SB 343 conflicts with Michigan law, which requires all plastic products sold within the state to be labeled with the resin code within the chasing arrows symbol and imposes a $500 civil fine per violation.[17] This legal discord is created across 29 other states, including California's own neighbors, Arizona and Nevada which require the chasing arrow symbol on plastic bottles, as well as rigid plastic containers.[18] The Coalition urges CalRecycle to consider these challenges and assemble, at a minimum, a working group to develop a range of potential policy solutions.

The chasing arrows symbol, when utilized in conjunction with consistent and transparent on- pack disposal information, offers consumers basic recyclability information. Forcing companies to remove it from certain products could lead to lowered recycling rates across the nation.[19] Instead, efforts should focus on promoting the use of on pack recycling instructions or digital triggers, educating consumers about the symbol's meaning and how recycling capabilities vary by location.

Furthermore, the inefficiency of the chasing arrows symbol stems from inconsistent recycling capabilities across counties and facilities. Instead of penalizing packaging that uses on package recycling instructions with the symbol, SB 343 could incentivize counties to invest in curbside collection programs, support facilities that utilize advanced sorting technologies or incentivize improvements in the recycling infrastructure itself. All these options are more productive than the current approach.

Finally, eliminating the chasing arrows symbol entirely could reduce consumer trust in packaging information. Instead, SB 343 could mandate clearer labeling that highlights the importance of checking local recycling guidelines alongside the symbol. This would maintain transparency while promoting consumer education and empowering consumers to participate in the recycling system.

Focusing on infrastructure improvements and consumer education can achieve SB 343's goal of improving recycling clarity without creating confusion or placing undue burden on businesses.

The Coalition commends CalRecycle for its efforts to increase accurate and useful information regarding the recyclability of products sold into California. We are supportive of the intended outcomes of SB 343 in promoting clarity for consumers and improving the circularity of materials. In order to reach these goals, the Coalition respectfully requests that CalRecycle both develop the underlying data of its Preliminary Findings Report and provide a more holistic, transparent picture of recyclability in California pursuant to SB 343, especially its overlap with existing recycling legislation such as the California CRV and EPR programs. In doing so, the Coalition urges CalRecycle to carefully consider the significant challenges faced by consumer-packaged goods companies doing business in California. Thank you again for the opportunity to provide comments on the SB 343 Preliminary Findings Report.

Please do not hesitate to contact us if you have any questions regarding this request. We appreciate your consideration.

Sincerely,

Agricultural Council of California American Chemistry Council AMERIPEN
California Chamber of Commerce California Grocers Association California League of Food Producers
California Manufacturers & Technology Association Consumer Brands Association
Dairy Institute of California Flexible Packaging Association
Household & Commercial Products Association Personal Care Products Council
The Toy Association

Footnotes:
1 See Cal. Pub. Res. Code § 42355.51(d)(1)(B)(i).
2 See Cal. Gov. Code § 11346.2 (a)(1).
3 APR Design® Guide
4 CalRecycle, SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Covered Material
Category (CMC) List (2023)
5 Association of Plastic Recyclers, Sorting Potential Test Method: Evaluation of the Size Sorting Potential for
Articles with at Least 2 Dimensions Less than 2 Inches (2020)
6 Cal. Pub. Res. Code § 42355.51(d)(1)(B).
7 See Cal. Pub. Res. Code § 42355.51(d)(2)(B)(i).
8 U.S. EPA, New International Requirements for the Export and Import of Plastic Recyclables and Waste
9 See Cal. Pub. Res. Code § 42355.51 (d)(1)(B)(i)
10 See Cal. Pub. Res. Code
11 CalRecycle, SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Covered Material Category (CMC) List (2023)

12 CalRecycle, Recyclability Status of Covered Material Categories (2023)
13 See Cal. Pub. Res. Code 42355(d)(1)(B)(i).
14 See Cal. Pub. Res. Code 42355(d)(1)(B)(i).
15 CalRecycle, SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Covered Material Category (CMC) List (2023)
16 See Cal. Bus. & Prof. Code § 17580(e)(2)
17 See Mich. Comp. Laws §§ 324.16102(1), 324.16104(1).
18 Oregon Truth In Labeling Task Force, Recycling Labeling Laws Today (2021)
19 SB 343 arguably prevents businesses from communicating truthful information related to recyclability to consumers.

April 1, 2024
Ms. Krystal Acierto
Acting Director of CalRecycle
Department of Resources Recycling and Recovery (CalRecycle)
P.O. Box 4025
Sacramento, CA 95812-4025
Via email to wastechar@calrecycle.ca.gov.

Re: California Senate Bill 343 Preliminary Findings Report
Dear Ms. Acierto,

Consumer Brands Association ("Consumer Brands") is appreciative of the opportunity to submit comments regarding the California's Department of Resources Recycling and Recovery's ("CalRecycle") December 28, 2023 published draft of its preliminary findings detailing which materials are commonly collected, sorted, sold, or transferred for recycling in California ("Preliminary Findings Report" or "Report"). Consumer Brands thanks CalRecycle for its extension of the public comment period to April 2, 2024.

Consumer Brands champions the industry whose products Americans depend on every day, representing more than 2,000 iconic brands. From household and personal care products to food and beverage products, the consumer-packaged goods ("CPG") industry plays a vital role in powering the U.S. economy, contributing $2 trillion to the U.S. GDP and supporting more than 20 million American jobs. The CPG industry also plays a crucial role in creating a more sustainable future through its products and has prioritized packaging and recycling innovation. All of the 25 largest CPG companies in the United States have made commitments to increasing recyclable content, source reduction, or reuse of material. Eighty percent of those companies are working toward introducing fully recyclable packaging for all of their products by 2030 at the latest.

Consumer Brands

The purpose of the Preliminary Findings Report is to provide the regulated community and the public with information to evaluate whether a product or package is recyclable in California as established by Senate Bill 343 (SB 343) [Allen, Chapter 507, Statutes of 2021]. SB 343 aims to supply consumers with accurate information about what is and is not recyclable in California, ultimately helping consumers make more informed choices

when it comes to purchasing products and providing guidance on the correct method of disposal or recycling at the end of the product's life. Consumer BrandsOur members are leading proponents of this goal, and we continually dedicate significant resources to its achievement. For example, Consumer Brands and The Recycling Partnership have collaborated to provide consumers with up-to-date, localized recycling instructions directly on product packaging through SmartLabel, Consumer Brands' digital QR code labeling platform. The integration of recycling instructions into SmartLabel in this transparent format informs and empowers consumers, while simultaneously encouraging proper end-of-life procedures for packaging — leading to less contamination in waste streams and increased recovery of valuable recycled materials.

Given the significance of SB 343 and our shared goals of empowering consumers to effectively participate in the system, promoting business innovation, and supporting circularity, Consumer Brands has closely engaged with this law since the legislation's introduction. We remain committed to providing feedback which supports and informs the implementation of SB 343, and the achievement of goals expressed within. Consumer Brands urges CalRecycle to strengthen the underlying data informing its Preliminary Findings Report and to provide stakeholders with a more comprehensive and unambiguous picture of recyclability in California under SB 343.

1. CalRecycle's Final Material Characterization Study Provides Insufficient Clarity on the Recyclability of All Material Types Studied

The stated intent of the Preliminary Findings Report is to provide the public and the regulated community with information to identify whether a product or package is recyclable in California. However, CalRecycle's preliminary Report on recyclability under SB 343 provides only raw data regarding the sampling and sorting conducted at facilities by a CalRecycle contractor. CalRecycle's preliminary report on material characterization contains valuable information on the materials studied to date, but its current format, technical language, and lack of clear guidance create a barrier for businesses and the public. Currently, businesses struggle to determine which materials are deemed recyclable under SB 343 due to the report's lack of clarity. This confusion will hinder compliance efforts.

While SB 343 exempts CalRecycle from the Administrative Procedure Act (the "APA")[1], in conducting its study of materials, CalRecycle should adhere to the Clarity Standard of the APA in preparing the final report. In other words, CalRecycle should draft the report in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style.[2]

The final report should clearly and precisely identify those material types that may be considered "recyclable" in California, including which material types and forms are (1) collected for recycling by jurisdiction recycling programs that encompass at least 60 percent of the population of the state; and (2) sorted into defined streams for recycling processes by large volume transfer/processing facilities that collectively serve at least 60 percent of recycling programs statewide with defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention. We

recognize that CalRecycle will not address the statutory criteria relating to PFAS and inks, adhesives, or other components that could prevent recyclability. The report, however, should clearly address those criteria that the legislature directed CalRecycle to address. In particular, the final report should provide a definitive answer for each of the 89 material categories: is it potentially recyclable, assuming it meets the remaining criteria in the statute?

It is critical for the Report to clearly identify whether each material meets the statutory criteria that CalRecycle was directed to address. This is necessary to achieve the express requirements of the SB 343 statute, to provide clear criteria for businesses to apply to their material types and to determine whether a recyclable claim may be made. The SB 54 report to the legislature includes much more definitive and instructional summary language, specifically on pages one and nine, which identify those material types that are “potentially recyclable.” Consumer Brands urges CalRecycle to similarly include information in the final Report that clearly addresses whether each material type meets the specific criteria established by SB 343 that the Report is intended to evaluate.

a. Language and Definitions Leave Essential Technical Elements Open to Interpretation

The SB 343 Preliminary Findings Report creates a number of uncertainties and uses technical language that companies must interpret to determine compliance, all of which contributes to a substantial lack of clarity. For example, multiple categories for “single use” and “multi use” are defined within the Preliminary Findings Report using the term “durable.” Yet “durable” is a descriptor with no concrete standards for its achievement delineated within the Report. Similar challenges recur throughout the Report terminology and definitions. Fiber category F01 is titled “uncoated corrugated cardboard,” though its definition explicitly permits “glossy coating.” However, the Report does not enumerate what constitutes a “glossy coating,” inhibiting compliance. The Report also appears to conflate “multilayer” and “multimaterial.” In regard to packaging formats, the terms are not always interchangeable and explicit notation of how CalRecycle differentiates or relates the two terms within the report is necessary for clarity. At minimum, each material type should be defined using language that aligns with real-world practices and is comprehensible to consumers and the regulated community within California.

Additionally, the Preliminary Findings Report includes the phrase “material that cannot be clearly identified as single use vs. multi-use” which is nebulous and complicates the specific categorization of packaging. It leaves uncertainty regarding how these materials will be categorized; is identification dependent on producer intent when placed on market? This question of categorization is also present in the Report’s differentiation between types of HDPE buckets. The Preliminary Findings Report separates HDPE Buckets into “Food” and “Non-Food.” These two material types and form categories are nearly identical yet are classified differently within the Report for recycling purposes. For example, HDPE Food Buckets are listed in Appendix 6 as non-recyclable, while HDPE Non-Food Buckets are noted in Appendix 7 as having 76% access to recycling. Given the limited feasibility of distinguishing between the “Food” and “Non-Food” HDPE

Buckets post-processing, we recommend CalRecycle express whether the governing factor for categorization is intent when placed on the market, or another criterion.

Finally, ambiguity exists regarding the composition of categories including the designation of “other,” such as “P20P PP (#5) – Other Rigid Items.” It would support stakeholder understanding and compliance with SB 343 requirements to have additional information expressing what the designation of “other” within the Preliminary Findings Report encompasses. Clear guidance will facilitate smoother implementation, enabling manufacturers to adhere to the rules with greater efficiency.

b. Labeling Requirements for Multi-material Packaging Material Types and Forms Unclear

The published Report does not provide adequate specificity to inform compliance regarding the use of the chasing arrows symbol in a How2Recycle label on a variety of multi-material packaging material types and forms. For example, at present it is unclear if use of the chasing arrow symbol within a How2Recycle label would be prohibited on a small closure that is customarily recycled with a bottle, such as a cap. The PP closure for a HDPE beverage container is commonly recyclable when attached to the bottle. This leaves uncertainty for compliance regarding whether the beverage container closure would be allowed to have a chasing arrows symbol, or whether the symbol would need to be revised or removed. At present, the Preliminary Findings Report does not provide clear direction as to whether the chasing arrows symbol on a small closure packaging material would be permissible if the closure is customarily recycled with the packaging. This sort of gap in instruction is inhibitory to compliance.

CalRecycle has also provided no guidance to the regulated community or to the public on how companies can communicate recycling instructions to consumers using existing programs. Programs to improve consumer clarity and end of life for products by providing consumers with on pack recycling instructions already exist. How2Recycle is a commonly utilized, valuable label that communicates recycling instructions to the public based on reliable, national recycling data. The national data from which How2Recycle makes its determinations take into account all factors referenced by the SB 343 Preliminary Findings Report, such as accessibility to collection and sortation capabilities. The How2Recycle logo is widely used and eliminating its use would erode consumer trust in recycling instructions and likely result in increased contamination. CalRecycle has not released guidance for how the SB 343 chasing arrows ban will apply to multimaterial components that utilize a How2Recycle label. For example, in many cases the HDPE bottle and polypropylene closure have a How2Recycle label which instructs consumers to recycle the materials together (with the cap attached to the bottle). Both components are widely recycled and considered recyclable by the How2Recycle program, yet it is unclear whether under SB 343 the bottle would still be able to have the How2Recycle logo. An additional circumstance in which this problem exists is multimaterial components where the closure is not considered recyclable according to SB 343. Prohibiting a How2Recycle label that directs consumers to separate the components in order to recycle the bottle may result in reduced consumer clarity and a loss of valuable recyclable material. This lack of clarity is applicable to

other material types and forms as well, to include HDPE bottles with multi-material closures.

c. Limited Dimensional Guidance for Small Materials

The Report provides inadequate information on small material size requirements for industry to comply with, and for consumers to understand which of their small products can be recycled. The industry accepted dimensional protocol for small materials is established by the APR standard, which sets a minimum of greater than 2” for each dimension of a product, including height, width, and length.[3] Senate Bill 54 guidance defines small materials as having “no side greater than 2’ means having a side whose length, width, or height is no greater than 2”.[4] For flexible items, this is measured when the item is laid flat in a relaxed state”, which is inconsistent with the APR guidelines.

While it is clear that SB 343 is ultimately not congruous with SB 54 or APR standards, the SB 343 Report does not provide additional guidance for the dimensions of small recyclable materials. Consumer Brands requests CalRecycle provide the public and regulated community with clarity on if SB 343 will uphold the widely accepted APR industry standard, the definition set forth by SB 54, or other criterion for its regulation of recyclable product dimensions.

Not only should CalRecycle ensure the Report can be understood by industry; the Report should also cater to a broader audience. A non-technical summary will benefit those without a recycling background, while a glossary defining technical terms (including “outflow” and “feedstock”) ensures all California residents can understand the content. Additionally, user- friendly features like explanatory text, flowcharts, and summaries will enhance comprehension. These changes will transform CalRecycle’s Report into a valuable resource for businesses and Californians alike. A clear and accessible Report will empower all stakeholders to participate effectively in California's recycling journey.

1. CalRecycle’s Material Characterization Study Fails to Provide Complete and Accurate Data

Limitations in study data both collected and reported publicly, leave uncertainty regarding whether the data gathered is sufficient to completely and accurately determine if each of the material types and forms studied is recyclable in California under the recyclability criteria set forth in SB 343. For example, the representativeness of the data used in CalRecycle’s Report on material characterization is crucial for drawing accurate conclusions about the state of recycling in California. Yet as drafted, CalRecycle’s study and final Report do not set forth, with actionable specificity, complete and accurate data sufficient to allow the public to decipher what materials are deemed recyclable in California. This information is also a crucial part of informing industry participants which packaging materials will be considered permissible and compliant according to the regulations. An examination of the produced data also generates concern regarding the thoroughness of the Report’s methodology. Below, we expand upon some of the specific areas in which improving the completeness or the

reporting of the data underlying the Preliminary Findings Report is essential to its accuracy and industry compliance.

a. Data Collection on Material Types and Forms Collected for Recycling by Jurisdiction Recycling Programs

CalRecycle's methodology for identifying recyclable materials solely through "internet research" on individual jurisdictions raises concerns about accuracy and consistency. For example, websites may not be up-to-date or utilize clear language. The preliminary Report does not mention any verification process for the online information gathered. Additionally, standardizing diverse descriptions from various jurisdictions into CalRecycle's pre-defined list of 89 categories could lead to misclassification. Given the insufficient Report methodology, there are fundamental questions about the accuracy of the Report's result. The lack of accuracy poses substantial concerns around the long-term viability of SB 343 in providing adequate guidance for the regulated community, inherently undermining the ability of SB 343 to foster improved recycling outcomes. Here, California should encourage jurisdictions to adopt a standardized format for listing accepted

recyclables on their websites. We encourage CalRecycle to update its methodology to improve accuracy and consistency.

b. Data Collection on Material Types and Forms that are Recovered by Large Volume Transfer/Processors (LVTPs) in California

CalRecycle's approach to characterizing materials recovered by Large Volume Transfer/Processors (LVTPs) poses several limitations. While targeting LVTPs with high processing capacity ensures that a sizeable portion of the state's recycling stream is represented, surveying 37 out of 50 identified LVTPs, and then selecting only 10 for hands-on sorting may not fully capture the diversity of practices across all facilities. Additionally, sampling only occurred in August 2023, which raises concern about seasonal variations in waste composition. Focusing on only 18 outflow categories is also unlikely to sufficiently capture the full range of materials processed by LVTPs.

The LVTP Material Characterization Study also states that "samples were spread out on a sorting table with a grate, allowing for materials smaller than two inches to fall through. Materials greater than two inches were sorted into 91 material categories based on Material Type and Form." The Report provides no specifications as to how technical elements of this sortation process were positioned or conducted. For instance, in order to reflect sortation at a Materials Recovery Facility, a screen set-up should simulate dynamic sortation conditions. This is necessary to effectively evaluate the movement of materials within recycling facilities, for example, whether a small plastic would correctly pass over an average sized glass screen as occurs within facilities. Information indicating whether these intricacies were applied or taken into account to inform an accurate sorting process study is not provided within the Report.

The Association of Plastic Recyclers developed a widely accepted industry standard, the “Evaluation of Size Sorting Potential for Articles with Two Dimensions less than Two Inches” (“Evaluation Protocol”).[5] The Evaluation Protocol was specifically designed to determine whether a plastic article will correctly pass over a lab scale, average sized glass screen that performs similarly to that used in production facilities. Consumer Brands recommends that the Evaluation Protocol be considered in developing the methods employed within the LVTP Material Characterization Study to promote accuracy, given its consistency with industry product standards. Additionally, if the method utilized to simulate sortation within the study determined a material capture rate (specifically the percentage of items remaining on the screen), CalRecycle should make this data publicly available to inform stakeholder feedback and industry packaging decisions.

Finally, the Report asserts that the LVTP “contractor ensured that sampled material was representative of the outflows of that facility, with sample weights ranging from 15 to 200 pounds.” No additional information regarding the determination of whether a sample is “representative” is provided, leaving the factual conclusion of what a representative outflow was assumed to be uncertain. A legitimately representative outflow sample must consider potential variability over time, variability across different waste haulers, and variability as a result of differing sub-geographies within an individual service area. The Report currently contains no indication of whether the “representative” sample accurately reflects a depth and breadth of facility outflows.

c. Representative Sample of Recycling Programs Served by LVTPs

The Report relies upon a sample of LVTPs that serve a total of 30 counties in California, which represent 52% of counties in the state. Consumer Brands does not object to the use of a representative sample given the statute’s express direction that CalRecycle should take a “representative sample of recycling programs in the state.”[6] The Report, however, simply asserts that the survey of LVTPs is a representative sample. It does not explain why this is the case, nor does it expressly extrapolate the analysis to all counties in the state. The Report also does not explain how the percentage of counties served by LVTPs would be relevant to the statutory criteria related to the percentage of programs served by LVTPs. The Senate Bill 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act, however, uses this same dataset and the recyclability requirements established in SB 343 to conclude that 37 types of material are potentially recyclable in the state by assuming the sample data could be extrapolated to the state as a whole. Consumer Brands recommends that the final report delineate how the sample of counties complies with the statutory requirements and whether the 60% statutory criterion related to the percentage of programs served by LVTPs is met for each material.

Data limitations resulting from inadequate methodology utilized by the Report may skew its results and ultimately cause the misclassification of recyclable materials as non-recyclable. For example, the Tin/Steel Cans, Lids material type and form category is comprised of widely recyclable packaging materials. The Preliminary Findings Report collection data supports this; the data states that in California, Tin/Steel Cans, Lids are

accepted for recycling by 95 percent of the population. Though this material type and form has a very high collection rate, Report data reflects a low percentage of surveyed counties sorting Tin/Steel Cans, Lids. Facilities can use magnets in sortation to recover this material type and form efficiently and accurately. The 33 percent data reported for surveyed counties sorting for Tin/Steel Cans, Lids is misrepresentative of the recoverability of these materials and either identifies a significant infrastructural gap in the sorting capabilities for California LVTPs or is informed by insufficient data. The irregular data reported for Tin/Steel Cans, Lids sorting may reflect that the sample percentage of surveyed counties sorting data is not fully representative of the whole. Consumer Brands emphasizes the need for complete and accurate data, and requests that material types and forms, such as Tin/Steel Cans, Lids, with data irregularities are further examined for recyclability to prevent the loss of valuable recyclable materials.

Consumer Brands recommends that CalRecycle include a larger number of LVTPs in the surveys and hands-on sorting to improve generalizability. CalRecycle should also include a wider range of outflow categories to strengthen the characterization process and provide a more robust understanding of recycling practices at LVTPs. Additionally, we request that CalRecycle provide stakeholders with the fundamental information about the processes undertaken and results acquired of its LVTP Material Characterization Study enumerated above. Given the immense level of technical and operational nuance that will be needed in the eventual process, we urge CalRecycle to consider and work collaboratively with Coalition members and the regulated community on recycling practices and to ensure industry has understanding sufficient to operationalize compliance with the law.

2. The Report Utilizes Only Two of Several Tests for Recyclability Enumerated in SB 343 Legislation

The published SB 343 Preliminary Findings Report does not fully address the statutory criteria for recyclability that CalRecycle is directed to assess in the material characterization study. This leaves concern that materials which are in fact recyclable will lose any recyclability designation or claims, resulting in the likely diversion of these materials to landfills. This is a negative environmental outcome that would undermine millions of dollars of private and public investments to increase the collection and sortation of these materials. It would decrease the state’s recycling rates—not increase them. Consumer Brands asks that CalRecycle address each of the statutory criteria for determining recyclability.

a. Report Inclusion of Basel Convention Requirements Set by the SB 343 Statute is Incomplete

The Report cites Section 42355.51(d)(2) of the Public Resources Code for the criteria used to determine whether a product or packaging may be considered recyclable, but it does not quote the complete language of the statute. Specifically, the provision’s second criterion – related to large volume transfer or processing facilities that collectively serve at least 60 percent of recycling programs statewide

-- includes a requirement that the “defined streams [be] sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.”[7] The Report neglects to note this criterion and does not address it in any way: neither the term “Basel” nor the term “reclaim” is found in the Report. This omission undermines the usefulness of the Report. Businesses who need to comply with SB343 have no independent way to determine whether the material types and forms that the Report concludes meet the dual 60 percent requirements also meet the statute provision concerning the Basel Convention. Without including information on consistency with the requirements of the Basel Convention, the Report does not serve its purpose.

That said, there is reason to believe that all defined streams from LVTPs are sent to and reclaimed at facilities consistent with the requirements of the Basel Convention. The United States is not party to the Basel Convention, and the Basel Convention has no application within the United States, so this provision can apply only to streams sent from California transfer/processing facilities to reclaiming facilities outside the U.S. The relevant category under the Basel Convention is called Y48, which encompasses non-hazardous plastic scrap or waste not covered by another Basel category. A party to the Basel Convention cannot receive shipments of wastes from a non-party (e.g., the U.S.) unless it has a bilateral agreement with the non-party (the U.S.) that meets certain criteria of the Basel Convention. Many countries have such agreements, including Canada and Mexico.

Mexico requires prior notice and consent to receive U.S. exports of non-hazardous plastic scrap and waste, including Basel listing Y48. Consent is provided by Mexico’s Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT), the Mexican environmental agency. As for Canada, as the U.S. EPA notes:

“Under a U.S.-Canada bilateral arrangement established in 2020, transboundary movements of the non-hazardous plastic scrap and waste covered by Basel listing Y48 are not subject to prior notice and consent requirements when subject to transboundary movement between the two countries and destined for environmentally sound management in either country.”[8]

Thus, these two close trading partners of the United States can and do receive defined streams from California-based LVTPs consistent with the requirements of the Basel Convention. In finalizing the Preliminary Findings Report, CalRecycle should include a determination that the defined streams from LVTPs that it has documented pursuant to PRC Section 42355.51(d)(2)(B)(i) are all sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention. Consistent with the purpose of the Report, such a determination will permit businesses to rely on the results of the final report in order to comply with SB 343.

b. Absence of Non-Curbside Collection Programs Addressed within the Statute in the Report

The following provision sets out an additional criterion under which a product or packaging may be deemed recyclable according to the SB 343 bill language, yet does not seem to be included in the Preliminary Findings Report:

“Before January 1, 2030, notwithstanding paragraphs (2) and (3), a product or packaging not collected pursuant to a curbside collection program is recyclable in the state if the non-curbside collection program recovers at least 60 percent of the product or packaging in the program and the material has sufficient commercial value to be marketed for recycling and be transported at the end of its useful life to a transfer, processing, or recycling facility to be sorted and aggregated into defined streams by material type and form”[9]

Consumer Brands recommends that this, among other additional criterion for recyclability established within the statute yet not present in the Report, be addressed by CalRecycle in a manner in which the public can provide comment on the criterions application, such as within an amended draft report that is provided for public comment.

3. Data and Methodology Information Provided from Recyclability Tests Utilized within the Report is Insufficient

a. Limitations With Collection Test Methodology and Resulting Data

Of the two tests the Preliminary Findings Report does address, the Collection Test is defined by the wording “is the material type and form collected for recycling, by recycling programs for jurisdictions that collectively encompass at least 60% of the population of the state?”[10] The Report cites “desk-based research and a survey of recycling program jurisdictions” as its primary methodology supporting determinations made through this test. Some categories fail to qualify as recyclable as a result of this test, including widely recyclable materials such as aluminum. If collected, aluminum will be sorted to a recyclable grade and a previous CalRecycle analysis of aluminum recyclability, through its Senate Bill 54 Plastic Pollution Prevention & Packaging Producer Responsibility Act Covered Material Category List, identifies the majority of aluminum material formats as recyclable.[11] According to CalRecycle in reference to the SB 54 list, “These CMCs [Covered Material Category] generally consist of materials that have established and robust recyclable material markets;” SB 54 delineates aluminum as recyclable and with viable end markets.[12] However, within the SB 343 Preliminary Findings Report, CalRecycle appears to have concluded according to the Collection Test that only jurisdictions with “food and beverage cans” being collected qualified for aluminum recycling, and those that marked “Bimetal/Steel/Tin Metal cans” did not qualify. This determination seemingly contradicts existing recycling data, including CalRecycle’s own SB 54 Covered Material Category List.

b. Obscurity within Defined Streams Test

The second test utilized in the Report is whether “the material type and form sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020, that process

materials and collectively serve[s] at least 60% of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention?"[13] The Preliminary Findings Report contains two sets of data on which CalRecycle appears to have determined test outcomes to be dependent.

Table 2 contains the results for the (1) percentage of the 30 counties served by the 37 LVTPs that have access to sorting, and (2) the percentage of that 30-county population served by 37 surveyed LVTPs that have access to sorting. However, Table 2 appears to omit material categories present in other Tables throughout the Report. It is unclear if these omissions are a byproduct of the survey methodology utilizing an open-ended question as to what streams the facilities sort into, rather than determining whether the longer list of categories as enumerated by CalRecycle would be sorted into a defined stream at the facility- and if so, whether this can still accurately depict sortation. Consumer Brands also has underlying concerns regarding the ability of the qualifying categories utilized in the defined streams test to meet the requirement established by SB 343. It is unclear whether a standard of 60% sorting access for the 30 counties surveyed and/or the 30- county population served by the 37 surveyed LVTPs is sufficient to fulfill the "60% of recycling programs" threshold stipulated by SB 343. Consumer Brands recommends clarification regarding the above, as well as whether the intended purpose of Appendix 7 is to suggest that material types and forms with sorting access available to at least 60% of the overall California population would fulfill the "60% of recycling programs" requirement established by SB 343.

Consumer Brands requests that CalRecycle provide further data and methodology demonstrating its use of the recyclability tests expressed within SB 343, beyond the Collection and Defined Streams tests. As explained, the sole use of these two testing methods is inconsistent with the legislation and creates limitations in assigning recyclability. We recommend that CalRecycle reevaluate widely recyclable materials such as LDPE and aluminum according to the criterion established by tests within SB 343 that do not appear to have been considered within the Preliminary Findings Report.

4. Inclusion of Criteria Absent from SB 343 Legislation for Recyclability Testing Leads to Results Inconsistent with Existing Data

Documents acquired through the Consumer Brands Public Records Act request appear to indicate that "Appendix 6. List of Material Types and Forms not Classifiable as Sorted for Recycling within Large Volume Transfer Processor Material Characterization Study" (Appendix 6) within the Preliminary Findings Report was produced through the characterization study. CalRecycle's response includes the bullet point: "Report pages 97 - 99 (Appendix 6): This shows the types and forms found not to be sorted for recycling." This wording does not match the recyclability test delineated by the SB 343 language. The only text in SB 343 that would appear to be directly relevant to sorting is as follows:

"Is the material type and form sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant

to Section 43020, that process materials and collectively serve at least 60% of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention?"[14]

By contrast, three criteria were cited as evaluated components in the SB 343 Preliminary Findings Report table in Appendix 6 for "sortability":

1. Rare Material (Rarely Observed in Study): Rare Material (Rarely Observed in Study) means that in total fewer than 10 pounds of this material were observed across all samples in the study, including defined streams and residual destined for disposal.

2. Low Recovery Rate (Rare Outside Residual): Low Recovery Rate (Rare Outside Residual) means that this material was more common in residual destined for disposal than in any defined stream.

3. Non- Recyclable Material (Organics and Hazardous Materials): Non-Recyclable Material (Organics and Hazardous Waste) means that the primary material is not intended for traditional recycling, but rather would optimally be destined for organics recycling or hazardous waste disposal.

These criteria do not clearly relate to the tests established by the SB 343 legislation. The language utilized within SB 343 creates a binary test, with the following two components: (1) whether facilities have a recyclable stream and (2) whether those facilities with recyclable streams cover 60% of recyclable programs. The Preliminary Findings Report methodology for "sortability" seemingly applies components beyond the scope of the test articulated within SB 343. This includes tests on sorting only in relation to the "rarity of the material", and tests on the presence of a sorting efficiency criterion that does not exist within the law's text.

There are several material categories that may be recyclable but are eliminated from being labeled as such due to the Report's lack of continuity with the tests delineated by SB 343. This includes "LDPE Beverage Bottles", which have a collection access rate of 94% as noted in the jurisdiction recycling access research. This category is listed as "rare outside residual" in Appendix 6, and thus appears to be considered not recyclable. LDPE beverage bottles are under deposit in the state of California, yet the rarity of sales of LDPE beverage bottles appears to have translated into LDPE beverage bottles being labelled as "not recyclable" by the tests in the draft Report, despite having recycling outlets and being included in the state deposit program.

5. The Report Diverges with California Recyclability Guidance and Contradicts California SB 54

a. Overlap and Contradiction of California SB 54 Recyclability Evaluations

Information provided in this Report may be utilized by CalRecycle to evaluate if materials meet criteria to be labelled or marketed as recyclable established in Public Resources Code (PRC) sections 42355.51(d)(A) and 42355.51(d)(2)(B)(i). Whether or not a packaging type or form meets the criteria to be labelled or marketed as

“recyclable” in California will significantly impact the ability of California producer companies to meet their circularity goals, as well as the mandates contained in other state laws such as Senate Bill 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act [Allen, Chapter 75, Statutes 2022]. SB 343 will ultimately interplay with the California extended producer responsibility program established by Senate Bill 54 which also relates to the recyclability of products within California. However, the SB 343 Preliminary Findings Report significantly diverges from the SB 54 Covered Materials Categories List, even though the definition of “recyclable” in SB 54 expressly cross- references and adopts the definition of “recyclable” in SB 343.

For example, the SB 54 Covered Materials Category List contains six categories for glass, all of which are designated as recyclable, while the SB 343 Preliminary Findings Report differentiates among nine separate glass categories. The names and descriptions of the categories also vary between the two reports. This further complicates compliance within the state given two separate sets of guidance for recyclability within regulations and no clear instruction expressing how the two programs will interface. Another example is present in the classification of HDPE Food Buckets and Non-Food Buckets within the Preliminary Findings Report. The SB 54 Covered Materials Category List classifies all HDPE pails & buckets, as well as other HDPE rigid items, as recyclable. In the SB 343 Report, HDPE Buckets are split into “Food” and “Non-Food,” where HDPE Food Buckets are labeled not recyclable, inconsistent with the SB 54 guidance.

Recyclability testing methods also apparently vary across the two processes. The SB 343 LVTP Material Characterization Study states that “samples were spread out on a sorting table with a grate, allowing for materials smaller than two inches to fall through. Materials greater than two inches were sorted into 91 material categories based on Material Type and Form.” This test seeks to achieve a nearly identical goal to the size test performed to determine recyclability within SB 54, yet outcomes appear to vary and no specified information on the test’s structure is provided. Consumer Brands requests that CalRecycle provide further detail to stakeholders to inform understanding of how the sortation exercise conducted in the SB 343 Preliminary Findings Report relates, if at all, to the definition of “Small – No Side greater than 2” that exists in the SB 54 Covered Material Category (CMC) List.[15]

Inconsistency across the California SB 343 and SB 54 regulations, especially in categorizing the recyclability of materials, significantly complicates compliance and clarity for consumers, and ultimately inhibits recycling outcomes. We recommend that CalRecycle publish information explaining how the two programs will interact and harmonizing the material categories as much as possible. This should be inclusive of how CalRecycle anticipates the final SB 343 Findings Report to integrate with the SB 54 Covered Materials Category List and how classifications that diverge across the two laws should be interpreted and complied with.

b. Discontinuity within Appendix 6 and California Beverage Container Recycling and Litter Reduction Act

The SB 343 Preliminary Findings Report includes several California Redemption Value (CRV) materials in its Appendix 6 classifications, which “displays all Material Types and Forms … which were not classified as sorted for recycling.” This includes items like CRV glass beverage containers and CRV HDPE clear beverage bottles. According to the California Business and Professions Code, beverage containers subject to the California Beverage Container Recycling and Litter Reduction Act (otherwise known as CRV containers) are exempt from SB 343 requirements.[16] However, within Appendix 6 these materials are classified as non- recyclable. The exact same material types and forms that do not qualify as subject to the CRV program within the state are listed as recyclable in Appendix 7. For example, non-CRV glass beverage bottles and non-CRV HDPE clear beverage bottles are listed in Appendix 7 as having 89% sorting access. It is unclear why the non-CRV program materials with the exact same material types and forms would differ from CRV materials in their recyclability designation. It also appears counterintuitive that materials currently recyclable within the CRV program would be considered non-recyclable according to the Preliminary Findings Report. Consumer Brands requests clarification on the inclusion of CRV materials within the Preliminary Findings Report, as well as recommends the Reports’ continuity with the existing California CRV program.

6. CalRecycle Should Work with Legislators to Increase Recycling Capabilities and Encourage Education

SB 343 will have a significant impact on companies distributing products and packaging throughout the United States. SB 343 presents challenges for businesses operating nationwide and removing the chasing arrows symbol may lead to unintended negative consequences in various jurisdictions across the nation. For example, SB 343 conflicts with Michigan law, which requires all plastic products sold within the state to be labeled with the resin code within the chasing arrows symbol and imposes a $500 civil fine per violation.[17] This legal discord is created across 29 other states, including California's own neighbors, Arizona and Nevada which require the chasing arrow symbol on plastic bottles, as well as rigid plastic containers.[18] Consumer Brands urges CalRecycle to consider these challenges and assemble, at a minimum, a working group to develop a range of potential policy solutions.

The chasing arrows symbol, when utilized in conjunction with consistent and transparent on- pack disposal information, offers consumers basic recyclability information. Forcing companies to remove it from certain products could lead to lowered recycling rates across the nation.[19] Instead, efforts should focus on promoting the use of on pack recycling instructions or digital triggers, educating consumers about the symbol’s meaning and how recycling capabilities vary by location.

Furthermore, the inefficiency of the chasing arrows symbol stems from inconsistent recycling capabilities across counties and facilities. Instead of penalizing packaging that uses on package recycling instructions with the symbol, SB 343 could incentivize counties to invest in curbside collection programs, support facilities that utilize advanced sorting technologies or incentivize improvements in the recycling infrastructure itself. All these options are more productive than the current approach.

Finally, eliminating the chasing arrows symbol entirely could reduce consumer trust in packaging information. Instead, SB 343 could mandate clearer labeling that highlights the importance of checking local recycling guidelines alongside the symbol. This would maintain transparency while promoting consumer education and empowering consumers to participate in the recycling system.

Focusing on infrastructure improvements and consumer education can achieve SB 343's goal of improving recycling clarity without creating confusion or placing undue burden on businesses.

7. CalRecycle Should be Mindful of How Proposed Definitions and the Regulatory Process May Invite Legal Challenges

Consumer Brands encourages CalRecycle to consider that SB 343, as proposed, may be open to meritorious legal challenges. Because SB 343 will greatly restrict the use of recyclability claims by any consumer products company that sells in California, there are attendant considerations including, but not limited to, the First Amendment and Due Process Clause.

Specifically, while SB 343 proposes it "would further declare that it is the public policy of the state that claims related to the recyclability of a product or packaging be truthful and that consumers deserve accurate and useful information related to how to properly handle the end of life of a product or packaging" the state's interest and objectives need to pass muster under the law and not impermissibly restrict truthful speech including as to environmental marketing claims. The U.S. Supreme Court has articulated a three-part test in its holding Central Hudson to assess constitutionality of whether a government agency may limit or prohibit commercial speech.[20] Consumer Brands believes that SB 343's restrictions on the recyclability of a product or packaging is subject to Central Hudson. The burden of proving these three elements under Central Hudson is paramount; a regulation that fails to satisfy any one of Central Hudson's requirements violates the First Amendment and is unenforceable. We encourage CalRecycle to consider the three factors with additional analysis as to the applicability of SB 343:

1. First, the government must establish that its regulation serves a "substantial" governmental interest.

2. Second, the government must establish that "the regulation directly advances the governmental interest asserted…." The regulation will be invalidated if the regulations "only indirectly advance the state interest involved." Moreover, the regulation must materially advance the interest, and the government has the burden of establishing that its regulation does so.

3. Third, the government must establish that its regulation is "[no] more extensive than is necessary to serve [the government's] interest."

As to the first element, there is undoubtedly a substantial government interest in preventing deception and ensuring a more effective recycling system and achieving circularity as part of the state's overall goals to mitigate environmental impact.

Nonetheless, it's important to distinguish that notwithstanding SB 343's intent to prohibit false and misleading speech, it must still satisfy the two remaining elements under Central Hudson. Based on the incongruous, non-specific data as presented at this phase of the material characterization study, the agency has not presented that restricting the use of the word "recyclable" will effectuate greater understanding by consumers or better outcomes for recycling. In fact, the law does not directly advance California's stated interest, addressing consumer confusion regarding what is and is not recyclable, because it actually prevents companies from telling consumers that recyclable products are recyclable. Thirdly, the Central Hudson test requires that the government agency show that the speech restriction is not more extensive than necessary; if alternatives to the prohibitions in SB 343 could advance the government's interest in a less intrusive manner, it will not pass muster.

We submit that CalRecycle consider the operational and legal consequences of the law as drafted, that SB 343, in practice, will simply silence manufacturers from making recyclability claims. It will not increase use of truthful recyclability claims, let alone increase consumers' understanding of recyclability, undermining the underlying intent of the legislation. With other consumer protection laws already in place to prevent false and misleading labeling, this law burdens speech with no added benefit.

Aside from the First Amendment considerations articulated above, the vagueness of SB 343's drafting also gives rise to due process concerns. Here, SB 343 sets forth several requirements a material must meet for a manufacturer to make a recyclability representation. But the requirements are murky at best. For example, to make a recyclability claim, CalRecycle's information must indicate that the material type and form is (1) collected by recycling programs in jurisdictions encompassing at least 60 percent of the state's population and (2) sorted into defined streams for recycling processes by at least 60 percent of the state's recycling programs. Cal. Pub. Res. Code § 42355.51(d)(2). But the Preliminary Report released by CalRecycle does not indicate what percent of statewide facilities are sorting into defined streams. Cal. Pub. Res. Code § 42355.51(d)(2)(B). Thus, many companies will self- censor this speech.

Additionally, under SB 343, a product or packaging shall not be considered recyclable in the state unless the product meets all of the following criteria:

1. The plastic packaging does not contain components, inks, adhesives, or labels that prevent the recyclability of the packaging according to the APR Design® Guide published by the Association of Plastic Recyclers.

2. For plastic products and non-plastic products and packaging, the product or packaging is designed to ensure recyclability and does not include any components, inks, adhesives, or labels that prevent the recyclability of the product or packaging.

3. The product or packaging does not contain certain intentionally added chemicals listed by California regulations.

4. The product or packaging is not made from plastic or fiber that contains perfluoroalkyl or polyfluoroalkyl substances (PFAS) meeting certain criteria.

Cal. Pub. Res. Code § 42355.51(d)(3) (emphasis added). However, because the regulations do not define the phrase “designed to ensure recyclability,” the regulations do not give adequate notice of what conduct is prohibited. Given the vagueness and general lack of guidance, companies will be forced to self-censor their speech because they will not have adequate notice of what conduct is prohibited

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Consumer Brands commends CalRecycle for its efforts to increase accurate and useful information regarding the recyclability of products sold into California. We are supportive of the intended outcomes of SB 343 in promoting clarity for consumers and improving the circularity of materials. In order to reach these goals, Consumer Brands respectfully requests that CalRecycle both develop the underlying data of its Preliminary Findings Report and provide a more actionable, holistic, transparent picture of recyclability in California pursuant to SB 343, especially its overlap with existing recycling legislation such as the California CRV and EPR programs and with full consideration of other laws. In doing so, Consumer Brands urges CalRecycle to carefully consider the significant challenges faced by consumer-packaged goods companies doing business in California. Thank you again for the opportunity to provide comments on the SB 343 Preliminary Findings Report.

Please do not hesitate to contact us if you have any questions regarding this request. We appreciate your consideration.

Sincerely,
John Hewitt
Vice President, Packaging Sustainability Consumer Brands Association
jhewitt@consumerbrandsassociation.org

Footnotes:
1 See Cal. Pub. Res. Code § 42355.51(d)(1)(B)(i).
2 See Cal. Gov. Code § 11346.2 (a)(1).
3 APR Design® Guide
4 CalRecycle, SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Covered Material
Category (CMC) List (2023)
5 Association of Plastic Recyclers, Sorting Potential Test Method: Evaluation of the Size Sorting Potential for
Articles with at Least 2 Dimensions Less than 2 Inches (2020)
6 Cal. Pub. Res. Code § 42355.51(d)(1)(B).
7 See Cal. Pub. Res. Code § 42355.51(d)(2)(B)(i).
8 U.S. EPA, New International Requirements for the Export and Import of Plastic Recyclables and Waste
9 See Cal. Pub. Res. Code § 42355.51 (d)(1)(B)(i)

10 See Cal. Pub. Res. Code
11 CalRecycle, SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Covered Material Category (CMC) List (2023)
12 CalRecycle, Recyclability Status of Covered Material Categories (2023)
13 See Cal. Pub. Res. Code 42355(d)(1)(B)(i).
14 See Cal. Pub. Res. Code 42355(d)(1)(B)(i).
15 CalRecycle, SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Covered Material Category (CMC) List (2023)
16 See Cal. Bus. & Prof. Code § 17580(e)(2)
17 See Mich. Comp. Laws §§ 324.16102(1), 324.16104(1).
18 Oregon Truth In Labeling Task Force, Recycling Labeling Laws Today (2021)
19 SB 343 arguably prevents businesses from communicating truthful information related to recyclability to consumers.
20 See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York, 447 U.S. 557, 561, 564 (1980).

Comment 113:
Name: Shane Buckingham
Date received: 4/2/2024
Source: Email (shane.buckingham@circularaction.org)
Email includes attachments: Yes; Non-text items incorporated into documents submitted to CalRecycle are not reproduced here.
Comment: Please find attached comments on behalf of Circular Action Alliance in response to the SB 343 Material Characterization Study: Preliminary Findings Report.

On behalf of Circular Action Alliance
Shane Buckingham
EPR Program Planning Lead
shane.buckingham@circularaction.org

Attachment text: April 2, 2024
Department of Resources Recycling and Recovery (CalRecycle) 1001 I Street
Sacramento, CA 95814
RE: SB 343 Material Characterization Study: Preliminary Findings Report

Dear CalRecycle Staff,

Circular Action Alliance is pleased to submit comments on the SB 343 Material Characterization Study: Preliminary Findings Report released by CalRecycle in December 2023.

Background

Circular Action Alliance (CAA) is a U.S., non-profit producer responsibility organization (PRO) established to support the implementation of extended producer responsibility (EPR) laws for paper and packaging. CAA's Founding Members include Keurig Dr Pepper, General Mills, Niagara Bottling, The Coca-Cola Company, Danone, Ferrero,

L’Oréal, Mondelēz, Nestlé, Procter & Gamble, PepsiCo, Unilever, Colgate-Palmolive, The Clorox Company, Mars, Incorporated, SC Johnson, Kraft-Heinz, Walmart, Amazon and Target. On May 1, 2023, Colorado approved CAA as the PRO responsible for administering a paper and packaging EPR program under the state’s EPR law. On January 5, 2024, CAA was selected by CalRecycle as the state’s inaugural, single PRO.

Comment #1: Methodology to determine whether a Material Type & Form (MT&F) is accepted for collection in each jurisdictional recycling program.

Although CalRecycle’s approach to determine whether a MT&F is accepted for collection in a jurisdictional recycling program is comprehensive and well executed, the report does not consider MT&Fs, such as PL35 and PL36 that are collected for recycling in parallel to local jurisdictions. These MT&Fs collected in return-to-retail or other depot-based programs should be counted towards the “access to collection” criterion pursuant to 42355.51(d)2(A). In addition, since these materials are separated at source, they by default should be considered to be “sorted to a defined stream” pursuant to 42355.51(d)2(B).

Despite the above, and as per the results presented in Table 2 of the report, there are several MT&Fs that are close to the 60% threshold for the “access to collection” criterion of PRC 42355.51(d)(2)(A). Given the consequential nature of the determination of “recyclability” on the potential viability of a packaging material’s use in the market, further investigation is warranted to ensure that the results are accurate for the following MT&Fs and corresponding Covered Material Categories (CMCs):

For example, Carton Council North America has identified more than 60 communities where California residents have access to aseptic and gable top carton recycling that were not counted in the SB 343 study. If these communities are included, it will show 69% of California’s population has “access to recycling” aseptic cartons and 72% for gable-top cartons. With the inclusion of this additional information, aseptic and gable top cartons exceed the threshold of recyclability on the basis of access as defined in SB 343.

As part of this exercise to identify which MT&Fs are solicited for recycling in California, recycling programs in each county would have been identified. CalRecycle would have been able to determine the number of distinct recycling programs that are found in California and therefore could have used this variable to present the results of the “sorting into a defined stream by LVTPs representing at least 60% of the recycling programs in the state” criterion for the determination of recyclability of a MT&F as per PRC 42355.51 (d)2(B).

We are seeking clarification on why the results were presented by county and not by recycling program. Additionally, we would like to better understand the impact on the results if the measurement was by recycling program.

Comment #2: Clarification questions on discrepancies in the main body of the report compared to appendices and the data files, with respect to the counties being served by LVTPs.

CAA identified several discrepancies in the information presented in the main body of the report, the appendices, and the supporting data files that were shared with our organization.

One discrepancy noted was on the description of the sampled outflows under the section “Material Characterization Study at LVTPs” on page 8, and the actual characterization results presented in the section titled “Material Characterization Study at Large Volume Transfer Processors” on pages 19-39, and Appendix 5 of the report.

As can be seen from the table below, the total number of sampled outflows included in the characterization study on page 8 is listed as 18. However, on pages 19 to 39 there are results presented for 29 distinct outflows. In the data files that were shared with CAA, there are results for 31 distinct sampled outflows, including residual sample results. These results match what was presented in Appendix 5.

We would like to understand the reason for this discrepancy, and why CalRecycle chose not to include the characterization results for the residual stream in the main body of the report.

Comment #3: Correlating the #of LVTPs to the 30 counties included in the SB 343 Study

From the report, it is unclear whether the 30 counties served by LVTPs surveyed by CalRecycle correspond to the 29 LVTPs identified as sorting through the initial telephone survey, or the 24 LVTPs with which CalRecycle conducted in-depth interviews and site-visits.

CAA reviewed the data files provided by CalRecycle to determine which LVTPs serve the 30 counties included in the SB 343 Report. However, we could not match the LVTPs to the 30 counties in either the file named “Data Entry for Site Visits - Summer 2023.xlxs” or “SB 343 MCS Facility Data 2023 S01 and S02.xlxs”. In fact, in the file named “Data Entry for Site Visits - Summer 2023.xlxs”, the 29 LVTPs listed in this file mapped to 35 counties. While we were able to determine the 24 LVTPs that were selected for in-person interviews and site visits from the file named “SB 343 MCS Facility Data 2023 S01 and S02.xlxs”, this file did not map these facilities to the counties that they serve. When we cross referenced the names of the 24 facilities to the file named “Survey_Juris_1002.xlxs” we were able to identify 20 of the 24 LVTPs that reportedly serve 30 counties.

Can CalRecycle confirm which LVTPs are serving the 30 counties that are included in the SB 343 Study report?

Comment #4: LVTPs Facilities Surveyed

The report identified 50 registered facilities but only surveyed 37 of them by phone. Furthermore, only 24 facilities received in person interviews and tours. We are interested in understanding why certain facilities were excluded from both the phone survey and the subsequent in person interviews and tours. The exclusion of 13 facilities from the initial phone survey and five facilities from in person visits seems to significantly impact the comprehensiveness and representativeness of the study sample.

We request clarification on the criteria used to select facilities for inclusion in each stage of the study.

The study only identified 29 facilities as actively sorting. Given that there are 50 registered facilities in total, there is a gap of 21 facilities whose sorting activities remain unaccounted for. We would appreciate it if you could elaborate on the methodology used to determine whether a facility was actively sorting and provide insights into why certain facilities were not classified as such.

The study's objective to assess the outflows and residual streams produced by LVTPs is essential. However, without a comprehensive understanding of the total number of facilities actively sorting materials, it becomes challenging to accurately characterize the landscape of LVTP activities in the state.

We recommend providing further details on how the study intends to address this gap in information and ensure that the characterization results are reflective of the entire spectrum of sorting practices among LVTPs.

Comment #5: Part 2 Methodology: Precision of Material Characterization Approach

While we acknowledge the efforts put forth in designing and implementing the material characterization approach, there are certain aspects that warrant further attention and expansion to ensure the accuracy and reliability of the data collected.

Based on available data and information, the approach relied on a relatively small number of samples for certain outflows, which may have contributed to large imprecision in the results, as indicated by the presence of significant standard deviations. This raises questions about the reliability of determinations regarding whether a MT&F ends up in a defined stream. It is imperative to address this issue to enhance the credibility of the study outcomes and the validity of any subsequent policy recommendations. We recommend providing further insight into the factors that influenced the decision to use a limited number of samples and to elaborate on plans to address any imprecision in the results.

We would also like to reiterate the critical importance of the methodology employed as it directly impacts the establishment of materials considered recyclable and therefore available for use by producers. Given the concerns raised regarding data precision, we would appreciate confirmation on whether additional sampling will be conducted and, if so, how the data from these additional samples would be incorporated into the study findings.

Comment #6: Criteria used to determine if an MT&F is “sorted to a defined stream”

On page 9 of the report, CalRecycle presents four criteria that it applied when analyzing the characterization results to determine if a MT&F can be considered to be sorted to a defined stream or whether it is considered to be a contaminant.

Criteria 3 states, “The proportion of the Material Type and Form in defined stream must exceed the proportion of Material Type and Form proportion in the disposed residual”.

Using this methodology may lead to unintended consequences. The example below shows the potential shortcoming of using the proportional composition data under Criterion 3, i.e.) “The proportion of the Material Type and Form in the defined stream must exceed the proportion of Material Type and Form in the disposed residual.”

As can be seen in the table, Packaging A is found in higher proportions in the residual stream than in the mixed paper stream, but in absolute terms, more is found in the mixed paper stream (four times the amount) than in the residual stream and its capture rate is 80%.

As the paper stream makes up the highest proportion of materials sorted in a MRF, this scenario could likely emerge. Applying the proportional results of the characterization studies to actual tonnage managed would yield the most reliable results but would require getting access to the tons managed in all outflow streams, including the residual stream.

CAA recommends that future studies account for this in the design and implementation, and that proportional results for outflow streams be applied to the actual quantities managed to ensure that MT&Fs are not incorrectly identified as having “no evidence of sorting.”

Comment #7: Criterion - Rare Material (Rarely Observed in Study)

In our review of the methodology presented in the report, we identified that there is a discrepancy in the criteria used to determine if an MT&F is “sorted to a defined stream” that is presented in the main body on page 9 of the report compared to what is presented in Appendix 6. More specifically, in Appendix 6, an additional criterion “rare material” was added to the assessment criteria. This additional criterion could prove problematic for the overall results because some outflow samples were as low as 15 pounds[1] each and several outflow streams sampled were limited to a few samples.

If there are circumstances when outflow streams sampled are both low in weight and are of limited quantities, it is possible that less than 10 pounds of a MT&F would have been sorted across all samples in the characterization study, even though that MT&F had accounted for a large fraction of a defined outflow.

Given this finding, it is our recommendation to remove this criterion from the assessment of whether a MT&F is expected to be sorted to a defined outflow stream.

Comment #8: Sampling of Expanded Polystyrene Outflows & Expanded PS Packaging in Outflow “Plastic #3 - #7”

In the data files that were shared with CAA, we note that 7 of the 20 LTVPs that we were able to map to the 30 counties are making an Expanded Polystyrene (EPS) defined outflow stream. These LVTPs manage covered materials collected from 10 of the 30 surveyed counties.

It is unclear why this defined stream was not chosen for sampling given that these 7 facilities represent approximately 33% of the counties served by the surveyed LVTPs that are part of the study. There does seem to be a discrepancy in the identified outflows being produced in the surveyed LVTPs in the shared files. For example, in the file “Survey_Outflows_091823_clean_rev0927.xlsx”, we note that of the 24 LVTPs that were selected for in-person and site visits, 7 of those have been identified as producing a “PS Expanded” outflow. However, in the file called “Data Entry for Site Visits - Summer 2023.xlsx” only 2 of the 29 LVTPs in that file are listed as sorting a PS (#6) outflow. Because the first of these two files would have captured information from the 24 LVTPs sorting in the in-depth interviews, we think it is likely that this file contains the more accurate results.

Additionally, we note that in the file called “SB343 MCS Hand Sort Data 2023 S01.xlsx”, it does appear that the proportion of the MT&F “PS Packaging” found within the “Plastic #3-#7” outflow is higher than the proportion found in the Residual outflow samples (see the table below). Therefore, it is unclear why CalRecycle has indicated 1 Page 8., “The contractor ensured that sampled material was representative of the outflows of that facility, with sample weights ranging from 15 to 200 pounds.” that there is “no evidence of sorting” for this material. PS Packaging meets all the criteria that CalRecycle has laid out in the methodology section on page 9 and Appendix 6 on page 97 of the report.

CAA is interested in better understanding from CalRecycle why PS Packaging is classified as “no evidence of sorting” in the report.

Comment #9: Recyclability status of Steel MT&Fs formats

The recyclability determination of many steel MT&Fs seem to have been reported in error as only 10 of the 30 counties surveyed have been identified as sorting this material. Magnets are likely the most common equipment found at MRFs to effectively sort ferrous steel packaging, are relatively inexpensive and have low maintenance costs to operate.

Looking more closely at the data files provided by CalRecycle, we note that 17 of the 20 LVTPs indicated that they produced a “Steel Can” outflow, and that these LVTPs serve all 30 counties included in the study. This effectively changes the percentage of Surveyed Counties Sorting from 33% to 100% for both the “Tin/Steel Cans, Lids – non-CRV” and Tin/Steel Aerosol Containers” MT&Fs. It also changes the “Percentage of Surveyed Population with Access to Sorting” for 55% to 100% for both MT&F categories. This is illustrated in the Table below.

According to the mapping of MT&F categories to CMCs found in the file called “Draft CMC List_Sept 2023.xlsl”, this correction would change the recyclability status of three CMCs to recyclable. These include:

Comment 10: Sorted to a defined stream: 60% of Recycling Program or 60% of Population

In both the SB 54 Report to the Legislature and the SB 343 Material Characterization Study Preliminary Findings, CalRecycle has presented the results on whether a MT&F or a CMC meets the criterion in PRC 42355.51(d)(B)” as both “% of surveyed counties sorting” and “percentage of surveyed population with access to sorting“ in the SB 343 Report and “percentage of surveyed counties served by MRFs recovering CMC” and “percentage of surveyed population served by MRF recovering CMC”.

For all materials, higher rates are found when the metric “% of surveyed population with access to soring”, or “Percentage of surveyed population served by MRF recovering CMC” is used. As noted by CalRecylce in its SB 54 report to the legislature, more populous regions are serviced by LVTPs that recover a wider range of materials than lower population areas. What this also illustrates, is that using population served instead of the number of programs or counties served as the denominator, better reflects “access to recycling”. It is also aligned with the first “access to collection” metric, which is based on population.

Changing the criterion to “Percentage of Surveyed Population with Access to Sorting” would allow six additional MT&F in SB 343 report to meet the 60% “access to sorting” threshold. 16 additional CMCs in SB 54 report would meet the 60% threshold. We understand that this would likely require a legislative change.

Comment 11:

CAA has identified several challenges related to mapping the SB 343 MT&F list to the CMC List, as found in the file named “Draft CMC List_Sept 2023.xlsx”, as well as discrepancies in the access and sorting determinations between the SB 343 Material Characterization Study and the Recyclability Status List published in the SB 54 Report to the Legislature. We outline these here.

11.1. CMC: “Glass – Other Forms w/o plastic component & “Glass – Other Forms w/ plastic component”

While the Percentage of Population with Collection of this CMC for Recycling is shown as only 11%, the Percentage of Surveyed Counties Served by MRFs Recovering this CMC is shown as 100%.

CMC believes that the discrepancy is the result of mapping this CMC to MT&F “Remainder/ Composite Glass” (in addition to 4 other MT&Fs). However, the definition of “Remainder/ Composite Glass” does not include any packaging (consisting of things like window glass and windshields). CAA recommends removing this CMC category

altogether or attributing to it the same access to collection value as for “Glass Bottles & Jars”.

11.2. CMC: “Tin/Steel/Bi-Metal - Other Forms w/o plastic component” & “Tin/Steel/Bi-Metal - Other Forms w/ plastic component”

These two CMCs appear to be incorrectly mapped to SB 343 categories that do not contain packaging (consisting of things like structural steel beams, aluminum window frames, and metal appliances). CAA recommends removing these CMCs. Furthermore, material meeting the description of “tins for candles” should be reported under: “Tin/Steel/Non-Aerosol container w/o plastic component” and “Tin/Steel/Non-Aerosol container w/ plastic component”.

11.3 CMC “Multi-Material Laminate - Aseptic Containers” and CMC “Multi-Material Laminate – Gable-top Cartons”

Both these CMCs are each directly mapped to a single corresponding MT&F (Aseptic Containers - non-CRV and “Gable-top Cartons - non-CRV”, respectively). Yet, their access to collection determination differs from one document to the next

• Aseptic containers access determination

o SB 343 Material Characterization Study (MT&F) = 53%

o Recyclability Status List (CMC) = 46%

• Gable top containers access determination

o SB 343 Material Characterization Study (MT&F) = 55%

o Recyclability Status List (CMC) = 49%

11.4 CMC “Kraft Paper - All Forms w/o plastic component” and w/ plastic component

Similarly, both CMCs are each directly mapped to a single corresponding MT&F (“Paper Bags and Kraft Paper”), yet their access to collection determination differs, as follows:

• Kraft Paper - All Forms w/o plastic component

o SB 343 Material Characterization Study (MT&F) = 63%

o Recyclability Status List (CMC) = 93%

• Kraft Paper - All Forms w/ plastic component

o SB 343 Material Characterization Study (MT&F) = 63%

o Recyclability Status List (CMC) = 85%

In both cases (11.3 and 11.4), the sorting to a defined stream determination is the same in both documents.

Comment #12: Updates to SB 343 Characterization Study & SB 54 CMC List

CAA recommends that any updates CalRecycle makes to the status of materials on the SB 343 list should automatically apply to the SB 54 CMC list. This would include when SB 54's CMC list is finalized on July 1, 2024.

Conclusion

We look forward to continuing the discussion with CalRecycle and other key stakeholders through the consultation process on the SB 343 Material Characterization Study. These are only our initial comments, and we may have more feedback on this policy area as our team continues its evaluation.

Sincerely,
Shane Buckingham
EPR Program Planning Lead Circular Action Alliance

Footnotes:

1 Page 8., "The contractor ensured that sampled material was representative of the outflows of that facility, with sample weights ranging from 15 to 200 pounds."

Comment 114:
Name: Michelle Fay
Date received: 4/2/2024
Source: Email (mfay@stopwaste.org)
Attachments: Yes
Comment: To CalRecycle:
Attached, please find comments from StopWaste in response to the request for comments on the Draft SB 343 Preliminary Findings Report released December 2023.

Attachment text: April 2, 2024
Submitted via email to: wastechar@calrecycle.ca.gov

Dear CalRecycle,
StopWaste helps residents, businesses, schools, and local governments waste less, recycle properly and use water, energy, and other resources efficiently. We are a Joint Powers Authority formed by the 17 local jurisdictions within Alameda County. StopWaste appreciates the opportunity to submit the following comments on the SB 343 Preliminary Findings Report published December 2023.
Background

Under SB 343 (Allen, 2021), CalRecycle is required to publish data about the material types and forms recycled in California. As outlined in PRC 42355.51(d)(2), a product or

packaging may be considered recyclable in the state if the product or packaging is of a Material Type and Form that is both:

Collected for recycling by jurisdiction recycling programs that collectively encompass at least 60 percent of the population of the state, and

Sorted into defined streams for recycling processes by large volume transfer/processing facilities, that collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.

1. Determining “collected for recycling” by jurisdictions

Per the report, CalRecycle staff looked at information available to the public on irecyclesmart.com as well as jurisdiction and hauler websites to determine which materials are collected by jurisdiction recycling programs. Oftentimes material categories posted on websites are broad and may not provide a full picture to determine what is collected for recycling. The report even noted that “vague and broad material descriptions by jurisdictions required assumptions on which specific material types and forms were accepted or excluded. The jurisdiction descriptions did not always align well with the SB 343 material types and forms list.”

An example where this may have led to incorrect assumptions is under the categories of “other ferrous metal” and “non-ferrous metal” which were both indicated to be accepted by just 24 percent of jurisdictions statewide. While most jurisdictions do not explicitly state ferrous metal (outside of cans) is accepted, if placed in recycling bins, ferrous metals are typically recovered at recycling facilities. Similarly, “aluminum bottles – non-CRV” is indicated to have a 51 percent statewide acceptability rate. Again, while jurisdictions may not explicitly state their acceptance, a non-CRV aluminum bottle placed in the recycling is not typically considered contamination and would likely be recovered.

Recommendation: StopWaste recommends CalRecycle conduct additional research such as a survey to jurisdictions and service providers to provide more granular details than what is provided on public facing websites

2. Determining what materials are sorted into “defined streams” and sent to facilities consistent with the requirements of the Basel Convention

Issue: Based on our understanding of materials that are collected, sorted, and baled for recycling, it is unclear how the study found just 33 percent of surveyed counties in the state sort tin/steel aerosol containers, tin/steel beverage containers-CRV, and tin/steel cans and lids-non-CRV for recycling. While we are just one county in the state, our understanding is that 100 percent of our 17 jurisdictions sort these metal containers for recycling. This finding defies logic and warrants further investigation.

Recommendation: StopWaste recommends CalRecycle conduct additional research to understand why a long-standing recyclable material such as tin/steel bimetal cans

would be identified as nonrecyclable when looking at defined waste stream MRF outflows in the state.

Issue: Basel Convention amendments effective January 1, 2021 regulate transboundary shipments of most recyclable plastics, including controlling the export of mixed waste plastics. The Preliminary Findings Report includes no mention of the Basel Convention requirements as a required filter for determining recyclability. At the February 13, 2024 public workshop hosted by CalRecycle, CalRecycle staff stated that Basel Convention rules are a requirement for producers and not something evaluated in the Report. This may be an inaccurate interpretation of the Department's statutory requirements.

Recommendation: StopWaste recommends CalRecycle reconsider its obligation to evaluate materials for compliance with Basel Convention requirements, as PRC 42355.51(d)(2)(B)(i) clearly states materials must be sent to "…a reclaiming facility consistent with the requirements of the Basel Convention."

Thank you for your consideration of these recommendations.

Please reach out if you have questions or if you would like to discuss further.

Sincerely,

Timothy Burroughs
Executive Director

Comment 115:
Name: Sam Gammage
Date received: 4/2/2024
Source: Email (SGammage@dow.com)
Attachments: Yes
Comment: Please see attached comment letter from Dow regarding SB 343 implementation. Please let me know if you have any questions.
Thanks,
Sam Gammage
Government Affairs, Dow

Attachment Text: April 2, 2024
Director Krystal Acierto
California Department of Resources Recycling and Recovery
2nd Floor, 1001 I Street
Sacramento, California 95814
RE: Senate Bill 343 (Allen, Ch. 75, 2022 Statutes); Informal Rulemaking Stakeholder Workshop - Written Comments
Dear Director Acierto,
Thank you for the opportunity provided by the California Department of Resources Recycling and Recovery ("CalRecycle" or the "Department") to submit written comments

on the preliminary findings report for SB3 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act Regulations.

SB 343 requires recyclable materials to be “sorted into defined streams for recycling processes by large volume transfer or processing facilities…that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.

The material characterization study looked at material types and forms that are collected, sorted, sold, or transferred by solid waste facilities; however, no analysis was done regarding the end market viability of such material types and forms. End market viability is an important criterion that must be met under mandates for SB 343 in order to be deemed recyclable. The study helped provide information from local jurisdictions on materials accepted by their recycling programs to understand current percentages of population with access and sortation but did not include such information for the third criteria of end market processing and viability. We would recommend that CalRecycle provide further analysis on this area of end market viability. By understanding where current rates of access, collection, and sortation are, the value chain can better align to allocate resources in order to necessary thresholds that will deem packaging material types of recyclable before regulatory timeline implementation.

Film & Flexible Packaging:

Film and flexibles serve an important role in the packaging ecosystem - from enabling products to be more easily designed for recyclability with their mono-material structure, to enabling lightweighting and carbon footprint reductions in their ability to substitute for rigid packaging structures. As regulatory implementation plays out in California and across the nation, there will be significant infrastructure investment and viable end market development to ensure that film and flexible packaging can be confidently recycled via curbside collection methods, with efficient sortation and robust end markets in place to enable circularity in film and flexible packaging for society.

However, as it exists today, current recycling infrastructure is still being built up for curbside collection of film to become an efficient mechanism to ensure its circularity. As such, alternative collection methods, such as store drop-off, serve a vital role in efforts to achieving circularity in packaging.

In assessing the preliminary findings report to understand current rates of access, collection, and sortation, it is important to factor alternative collection methods, including store drop off, in order to have an accurate and wholistic understanding of existing recovery of material types. The lack of inclusion of drop-off collection for film and flexible packaging within the report does not allow for an accurate representation of material recovery rates for film and flexible packaging, especially given the fact that their primary method of material recovery is only via drop-off currently. Until infrastructure investments from the program plan are realized to allow for viable curbside collection of films, drop-off collection and alternative collection must be accounted for to understand

where those material types fall within the necessary thresholds to be deemed recyclable under SB 343 mandates.

Additionally, it is important to ensure that there is a path forward to allow for material types that are not currently meeting necessary material recovery thresholds but are undergoing important investments to improve access, collection, sortation, and end market viability to meet these thresholds before regulatory effective dates. In the instance of film and flexible packaging, numerous ongoing efforts and investments are underway to identify and scale recovery methods for film and flexible packing. Two examples include:

Film and Flex Recycling Coalition (FFRC) – The Recycling Partnership launched the Film and Flexible Recycling Coalition in 2019 to work collaboratively across the value chain and packaging industry, with a plan to gather data on the impacts of available collection methods, assess and pilot the most promising technological interventions, such as How2Recycle and RecycleCheck, and implement national interventions to drive the recycling of films and flexibles. Three focus areas for this year are:

a. Film and Flex access and adoption – focus on curbside access and optimization of capture from home to maximize recovery

b. Film and flex MRF capture journey – provide value proposition for film and flex to MRFs and enable technology and best practice to enable acceptance at scale

c. Packaging fate – support for bale quality improvement & end-market testing

Flexible Film Recycling Alliance (FFRA) – Plastics Industry Association is forming a coalition across the packaging value chain to support investments in consumer education on how to recycle flexible films products, creation on a plastic film recycling directory for use by consumers and industry, along with data verification, and ongoing advocacy to promote collection infrastructure and recycling of film and flexible packaging.

Materials Trending Towards Recyclability: There is currently a clean-up bill, SB 1231 that allows for a petition process where producers can petition for materials that are close to meeting the necessary requirements for SB 343 to be deemed recyclable. Dow's stance has normally been to advocate for letting regulatory implementation play out for SB 343 and SB 54 before attempting to amend or clean-up; however, without any sort of mechanism in place for CalRecycle to make determinations on the recyclability of material types, it could be pertinent to look to add language that allows for an on-ramp for materials to be deemed recyclable if they are close to or will meet material recovery threshold requirements in the coming years, in accordance with SB 54 regulatory timeline.

Dow sincerely appreciates the ability to comment and look forward to the continued dialogue. Please do not hesitate to reach out if you would like any additional information on the above.

Sincerely,
Sam Gammage, State Government Affairs Director

Comment 116:
Name: Nick Lapis
Date received: 4/2/2024
Source: Email (nicklapis@cawrecycles.org)
Attachments: No
Comment: I wanted to provide a couple specific comments on the SB 343 preliminary findings that were issued in December and presented in February.
As you are aware, CAW co-sponsored this legislation, and we believe its implementation is crucial to ensuring both truth in environmental advertising and producer responsibility. After reviewing all the background data, survey methodologies, and responses collected, we believe the Department has made two major errors which have resulted in several inaccurate findings.

First, the department did not evaluate whether or not a given recycling end use is consistent with the requirements of the Basel Convention.

SB 343 delineates which elements of a recyclability determination are the responsibility of the Department versus those that are the responsibility of individual manufacturers. CalRecycle is clearly charged with determining the following:

The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities, as defined in regulations adopted pursuant to Section 43020, that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.

Nothing in the supporting materials indicates that any questions identifying reclaiming facilities for individual defined streams was part of either the in-person or phone surveys. In effect, this part of the criteria was completely ignored, and manufacturers have no way to further ascertain this information on their own. This renders ones of the hallmarks of SB 343 entirely meaningless.

Second, the questions asked of facility operators, and the responses given, did not seem to accurately differentiate between individual forms of given material types. The statutory requirement that “material type and form is sorted into defined streams” was intended to specifically differentiate whether individual bales were made of a product category. For instance, a bale of PET bottles is a defined stream of a product and form that is distinct from a bale of PET thermoform containers. The question asked of facility operators was fairly vague in this regard, and the resulting responses reflect this lack of clarity. Most facility operators simply answered that they sell bales of “PET,” for instance, and no clarifying questions were asked about the form factors and markets, not to mention the subgrades within form factors.

Both of these issues are absolutely crucial to the implementation of SB 343, so we strongly urge the Department to follow up with all surveyed operators to get further clarity on what is occurring at their facilities. While redoing the entire survey would likely prove fairly onerous, it would be relatively easy to at least follow up on all material types that have been deemed potentially recyclable where either (a) the material type is subject to Basel Convention limitations or (b) the responses about end markets were not as detailed as the “type and form” categories identified by the Department.

It is incredibly important that CalRecycle reassess this data and conduct additional research. Given the lack of clarity in the previous survey, we recommend that the specific follow-up survey questions and methodology be put out for public comment prior to being implemented to allow stakeholders to identify potential concerns ahead of time.

While these two issues are the most crucial, I would like to bring one more issue to your attention. Several stakeholders and news outlets seemed to have been confused about how this data can be used, and whether inclusion on the “potentially recyclable” list is sufficient for a manufacturer to make a recyclability claim. It might behoove the Department to put out additional explanatory text on how these results fit into the broader regulatory scheme in SB 343, including the additional requirements that fall on individual product manufacturers.

As you are aware, SB 343 was always incredibly important in and of itself, but is doubly so with the passage of SB 54, which relies heavily on the recyclability framework of SB 343. It is important to get this right.

I would like to schedule a time to discuss these issues with you. Would you be able to let me know when you would be available to meet?

Thank you.

Nik Lapis (he/him)
Director of Advocacy
niklapis@cawrecycles.org
916.443.5422 (O)\415.845.6335 (M)

Comment 117:
Name: Jan Dell
Date received: 4/4/2024
Source: Email (lastbeachcleanup@gmail.com)
Attachments: No
Comment: CalRecycle SB 343 Team,
Thank you for stating that you are employing a false methodology to determine California’s population access to sortation of material types and forms under SB343. Let me reiterate: you must admit the methodology error and correct it. Attached is the letter from 106 NGOs demanding that you correct the false methodology which, along with other errors, is turning SB343 into a “Lies in Labeling Law.”

Analogy: If LA County (9.8 million people) has 17 hospitals but only 2 hospitals have XRAY machines, a credible estimate of XRAY coverage is 2/17 = 12% of LA (1.2 million people). Per CalRecycle's flagrantly false calculations, you would claim that ALL 9.8 million people have access to XRAYs. Even worse, you would claim that the populations of Orange, Riverside, and San Bernadino counties (another 11 million people) have access to those 2 LA hospitals. That is what you did on the PP5 sortation results.

The current methodology is obviously blatantly false and produces wildly inaccurate results. It is not compliant with California law (42355.51). It will also be ridiculed in the court of public opinion. No "reasonable person" would agree with it. I have alerted mainstream media to this fatal flaw issue. Plastics News has already reported on it. Article attached in case you don't have a subscription.

It would be VERY SIMPLE for CalRecycle to use existing SWIS LVTP MRF data and RDRS sortation data to do a credible estimate for the entire state. The needed data already exists in those two databases. The MRFs already have to report sortation by Material Type and Form by law. There is no need to do a separate survey. As a registered professional chemical engineer in the State of California, I done the analysis for you for PP5 rigids. That is detailed in my comments (attached again). However, you must redo the sortation calculation for ALL material types and forms. I'm available to explain where you can find that data in your own existing databases, if needed.

I urge you to take this matter seriously and make the correction as soon as possible. California has already received much negative public attention due to the failed plastic bag law. The negative public attention on the implementation of a "Lies in Labeling Law" will be far worse.

Regards,
Jan

Comment 118:
Name: Alexa M. Pecht
Date received: 4/5/2024
Source: Email (pecht@khlaw.com)
Attachment(s): No
Comment: Hello
I am reaching out with a question regarding whether SB 343's restrictions on the use of the chasing arrows symbol (or mobius loop) extends to recycled content claims. This email seems to be the only listed contact for SB 343, but please let me know if I should redirect this question to another contact at CalRecycle.

Specifically, we are looking for guidance on whether SB 343 is intended to prohibit an entity from using the chasing arrows in the context of a recycled content claim by, for instance, labeling a product with a chasing arrows symbol accompanied by a qualifier such as, "made from xx% recycled content." We noted that the law provides that "it shall be a defense to any suit or complaint brought under this section that the person's environmental marketing claims conform to the standards or are consistent with the

examples contained in the [FTC Green Guides].” Cal. Bus. § Prof. Code § 17580(b)(1). Accordingly, it would appear that making a qualified claim in line with the Green Guides may absolve a marketer from potential violations of SB 343; however, the provision goes on, in relevant part, to explicitly exclude violations of Cal. Pub. Res. Code § 42355.51 from the defense. Thus, raising a question in our minds as to whether the chasing arrows may be used in the context of properly qualified recycled content claims.

We would appreciate any guidance or clarifications you can offer. Best regards,
Alexa M. Pecht
Associate
Direct 202.434.4132
Keller and Heckman LLP | 101 G Street NW, Suite 500 West | Washington DC 20001

Comment 119:
Name: Steve Bullock
Date received: 4/9/2024
Source: Email (Steve@cerrell.com)
Attachment(s): No
Comment: Greetings - can you let me know the process for obtaining copies of the public comments concerning the Preliminary Findings Report that were submitted through the April 2 deadline? Will these be posted online or is there another way that those comments can be reviewed?

Comment 120:
Name: Kris Bettin
Date received: 4/23/2024
Source: Email (kibettin@gmail.com)
Attachment(s): No; Non-text item incorporated into email body submitted to CalRecycle are not reproduced here..
Comment: As a packaging designer I am finding it harder to fit all the different countries and states required logos.
They all say the same thing!

Can one global standard be set PLEASE!!.

Attached is an example of where we are at so far in figuring out which logos need to go on a simple paper tram clam with a small PET blister to protect the customer from the sharp product at retail. We try to use limited packaging materials. We also want to have some information about the product but all the warnings and logos are taking up all the space.

My customer what’s to use one package for global use. This saves cost and materials. But with too many recycle logos the customer will totally turn off trying to figure it out.

May 2024

Comment 121:
Name: Victoria Morales
Date received: 5/8/2024
Source: Email (Victoria.Morales@plzcorp.com)
Attachment(s): No
Comment: Hello,
Has CalRecycle held the formal public meeting for SB343 yet?
Victoria Morales
Manager, Regulatory
PLZ Corp.
Desk: 1-951-774-2186
Cell: 1-442-258-4577
Victoria.Morales@plzcorp.com
www.plzcorp.com

Comment 122:
Name: Victoria Morales
Date received: 5/8/2024
Source: Email (Victoria.Morales@plzcorp.com)
Attachment(s): No
Comment: Hello Donnet, Can you please tell me the next step for SB343? Is the first preliminary study final? Is the statute in effect? Is there a sell-through period?
Victoria Morales
Manager, Regulatory
PLZ Corp.
Desk: 1-951-774-2186
Cell: 1-442-258-4577
Victoria.Morales@plzcorp.com
www.plzcorp.com

Comment 123:
Name: Brad Braddon
Date received: 5/10/2024
Source: Email (Brad.Braddon@tekni-plex.com)
Attachment(s): No; Non-text item incorporated into email body submitted to CalRecycle are not reproduced here..
Comment: Dear CalRecycle,
One of our products at Tekni-Plex is a molded paper fiber egg carton. These are made from 100% recycled materials and are capable of and are routinely being recycled. Based on the 2 charts below, molded paper fiber, when collected, is recycled. However, under SB343, we cannot label using chasing arrows as we are outside the 60% collection rate required.
Is it possible to use one of the how2recycle or other symbols that contain a qualifying statement about being recyclable? See example below.

Comment 124:
Name: Melissa Koshlaychuk
Date received: 5/13/2024
Source: Email (mkoshlaychuk@calstrawberry.org)
Attachment(s): No
Comment: Would you kindly remind me when CalRecycle anticipates releasing the final waste characterization study? I have in my notes it might be around July or August of this year, but now I cannot find where I sourced that information (guessing a previous email with the Department or a workshop).

Comment 125:
Name: Alexa M. Pecht
Date received: 5/16/2024
Source: Email (pecht@khlaw.com)
Attachment(s): No
Comment: Hello –
I am reaching out with a question regarding the implementation of the SB 343 restrictions on recyclability claims for products or packaging sold in California. Specifically, how should entities frame nationwide recyclability claims in light of the impending California restrictions? Is it permissible for entities to qualify the applicability of their recyclability claims – that otherwise comply with the FTC Green Guides and other state environmental claims laws but may not meet California recyclability criteria – to avoid running afoul of SB 343?

SB 343 is silent on using qualified language to convey limitations of recyclability. Section 17580.5(b)(1) of the California Business and Professions Code, however, provides that "it shall be a defense to any suit or complaint brought under this section that the person's environmental marketing claims conform to the standards or are consistent with the examples contained in the [Green Guides]." However, the provision goes on, in relevant part, to explicitly exclude violations of Cal. Pub. Res. Code § 42355.51 from the defense. We interpret the provision to mean that compliance with the FTC guides on recyclability claim is not a defense in California because of SB 343's express means of defining recyclability. It is not clear, however, whether the provision would prohibit a clear disclaimer that a national recycling claim is prohibited in California.

Recognizing the use of clear and prominent disclaimers would, however, be consistent with past California practices. For example, in the settlement with ENSO Plastics, LLC regarding environmental marketing claims that were misleading under California law, the state agreed that ENSO could make claims that were otherwise permissible outside the state provided that the following "California Notice" was clearly and conspicuously displayed:

> California law prohibits the sale of plastic packaging and plastic products that are labeled with the terms 'biodegradable,' 'degradable,' or 'decomposable,' or any form of those terms, or that imply in any way that the item will break down, biodegrade or decompose in a landfill or other environment. These restrictions

apply to all sales in or into the State of California, includes such sales over the Internet.

We believe that a similar disclaimer for recyclable claims should be acceptable under SB 343 and request confirmation of such an approach by CalRecycle. Please let us know if you have any questions or if we can provide any additional information.

Best regards,
Alexa M. Pecht
Associate
Direct 202.434.4132
Keller and Heckman LLP | 101 G Street NW, Suite 500 West | Washington DC 20001

Comment 126:
Name: Jen Keung
Date received: 5/16/2024
Source: Email (JenKeung@dwt.com)
Attachment(s): No
Comment: CalRecycle Legal Team,
I am reaching out to ask for clarification on laws regarding recycling claims and SB 343.

First, we understand for purposes of § 17580 of the Cal. Business & Professions Code, displaying a chasing arrows symbol or otherwise directing a consumer to recycle a consumer good shall not be considered misleading pursuant to § 17580.5 or § 42355.51 of the Public Resources Code if either of the following apply: … the consumer good is a beverage container subject to the California Beverage Container Recycling and Litter Reduction Act (commencing with § 14500 of the Public Resources Code). Therefore, does that mean if products are a beverage container subject to the California Bottle Bill (CRV bottles), they are exempt from all of SB 343's requirements? Any resources that provide insight on this exemption?

Second, based on the APR Design® Guide, although labels may not *prevent* the recyclability of the packaging, depending on the material they may not be in the "Preferred Design" category. Our understanding is that sometimes labels, adhesives, and inks on packaging get washed off before recycling. In those cases, do the products meet the recyclability requirements of SB 343? If these labels and adhesives do not get washed off prior to recycling, can the packaging bear a recycling claim?

Kind regards,
Jen
Jen Keung They/Them/Theirs
Associate | Davis Wright Tremaine LLP
P 503.778.5445 E jenkeung@dwt.com
A 560 SW 10th Avenue, Suite 700, Portland, OR 97205

Comment 127:
Name: Justin Given
Date received: 5/23/2024
Source: Email (jgiven@loraxcompliance.com)
Attachment(s): No

Comment: Hi There,
I'm hoping you will be able to help me with some information regarding SB 343 and the material characterization study. We have heard comments that the collection percentage for non-CRV aluminum bottles has been updated, but we cannot seem to find an official update, so we have 2 questions that I hope you can answer for me:

When do you plan to update the material characterization study?

Secondly, is the above statement true about the collection percentage of non-CRV aluminum bottles?

Thank you in advance!

Kind regards,
Justin
Justin Given, Environmental Compliance Consultant
Global environmental packaging & product stewardship
UK Office: Rugby, England | US Office: Providence, RI
Phone: +44 (0) 1926 911 216

Comment 128:
Name: Martina Sironi ZPC
Date received: 5/27/2024
Source: Email (m.sironi@zpcsrl.com)
Email includes attachments: No
Comment: Dear all,
following up your e-mail below I have a question regarding 18 months deadline.
In particular, since the Final Material Characterization has not been published yet, could you please confirm that the deadline does not apply until its publication?
Martina Sironi
Trade Compliance Specialist
ZPC Srl a Socio unico – Societa Benefit
Tel. +39 045 9298085
Cell. +39 3409930201

Comment 129:
Name: Elisabeth M. Lewis
Date received: 5/28/2024
Source: Email (Elisabeth.Lewis@klgates.com)
Email includes attachments: No; Non-text item incorporated into email body submitted to CalRecycle are not reproduced here..
Comment: Hello,
We would appreciate your assistance with understanding CalRecycle's position on use of the chasing arrows symbol on some non-plastic packaging. Our questions are as follows:
1. We would like to confirm that a product sold in a paperboard/cardboard box with a PET window is recyclable "as is" and that a consumer would not have to remove the

PET window and recycle the cardboard/paperboard box and PET window separately. A representative in the recycling department of the City/County of San Francisco informed us that they consider this type of packaging to be recyclable, and we understand that the recycling centers in California have the capacity to handle paperboard/cardboard recyclables that contain small amounts of other materials, like PET. We have attached a CalRecycle document stating that envelopes with plastic windows are recyclable, which is the document the representative at the department of the City/County of San Francisco pointed us to. An example of the type of packaging of interest is:

2. We would like to confirm that it would be sufficient for a manufacturer to label the packaging for a product like the pasta box above for paperboard/cardboard only and not provide separate information on the paper and the plastic window. Is this correct?

3. Relatedly, does CalRecycle suggest certain labeling to indicate that their product packaging is paperboard/cardboard? Is the code included in the picture below, without the inclusion of the chasing arrows symbol, sufficient?

4. If a manufacturer wants to indicate that the box their product is sold in is made of

paperboard/cardboard, could the manufacturer eliminate the chasing arrows symbol on the packaging and only label the packaging with the code for paper, for example? We are, in part, concerned with limits on the symbol under SB 343**.** Please see below for an example of what this labelling might look like. It is essentially the same as the labeling in the image in question 3, but without the chasing arrows symbols.

5. Finally, if a manufacturer must label PET film window in packaging for a product that is not a rigid plastic bottle or container, like the PET window in the pasta box example above, could the manufacturer do so without including the equilateral triangle required for rigid plastic bottles and containers?

Thank you in advance for your thoughtful consideration and assistance with these questions.
Please feel free to reach out if you have any questions or need me to further clarify any of the information above.
Best,
Elisabeth

Elisabeth Lewis
K&L Gates LLP
134 Meeting Street
Suite 500
Charleston, SC 29401
Phone: 843-579-3464
Fax: 843-579-5601
Elisabeth.Lewis@klgates.om
www.klgates.com