



# Californians Against Waste

Conserving Resources. Preventing Pollution. Protecting the Environment.

November 17, 2017

Scott Smithline, Director,  
CalRecycle  
1001 I Street  
Sacramento, CA 95814

## **Re: SB 270 Rulemaking: Draft Regulatory Text & 2018 Legislative Report**

Dear Director Smithline,

Californians Against Waste appreciates the opportunity to provide initial comments on proposed draft regulations for implementation of California's Plastic Bag Ban (SB 270), and the content of the 2018 report to the legislature.

For implementation of the reusable bag provisions of SB 270, the statute proposes a somewhat new model of enforcement that places greater level of responsibility on manufacturers to demonstrate compliance, rather than placing the burden on the public agency to demonstrate non-compliance. Any entity wishing to make available for sale an otherwise prohibited item may seek an exemption from that prohibition by clearly demonstrating to the state that the specified product fully complies with all applicable requirements of SB 270 for exemption to the prohibition.

Specifically, Section 42282 of the Public Resources Code requires that a bag manufacturer, as a condition of sale of their product in this state, arrange for a third party certification entity to clearly demonstrate with documentation to the satisfaction of the department that their reusable bags comply with all of the requirements of Section 42281 as well as, for plastic film reusable bags, provide information on postconsumer recycled material required by Section 42281.5. If the provided documentation fails to clearly demonstrate compliance, then the department is prohibited from listing a bag on the online Certified Reusable Grocery Bag List and the bags shall not be made available for sale in this state.

### **Recommendations for Draft Regulatory Text**

- Adjust language in Section 17988.3 (c) so that it's clear that the listed proof of certification documents are required, dependent on requirements specific to each bag material type, rather than supplemental.
- Clarify that reusable bags will not be listed on the online Certified Reusable Grocery Bag List, or if a bag is currently listed will result in the immediate removal, if the producer fails/ has failed to submit proof of certification documents that don't confirm full compliance with applicable requirements.

As proposed, the language of subdivision (c) of Section 17988.3 suggests that the listed documents are optional rather than required to be included as proof of certification. SB 270 clearly states that these documents are required to be submitted to the department in order to confirm compliance. The attached document proposes amendments to Section 17988.3 of the draft regulations in mock-up form. Proposed amendments are shown in bold, with strikethrough text representing suggested removal of text and underlined text representing suggested additional text.

Draft regulatory text Section 17988.4 concept 1 subsection (3) and concept 2 subsection (5) both include language that require the removal of reusable grocery bag producers from the Certified Reusable Grocery Bag Producers List based on a failure to submit full payment of the administrative certification fee. If a producer can be removed from the list on the basis of failure to submit the certification payment, failure to submit proofs that adequately confirm full compliance should also be a reason for removal. Subsection (f) of Section 17988.5 of the draft regulatory text states that, “failure to comply with the requirements of this article will result in immediate removal” from the list. The article and the statute supports the department’s authority to not list producers on the Certified Reusable Grocery Bag Producers List proofs that submit proofs which don’t confirm full compliance with SB 270.

## **2018 Report to the Legislature**

The report to the legislature would benefit from inclusion of the following:

- A listing of all regulated (plastic film) reusable bags submitted for listing on the Certified Reusable Grocery Bag List that have successfully demonstrated compliance with all requirements of the legislation, including payment of required administrative review costs.
- A listing of all regulated (plastic film) reusable bags submitted for listing on the Certified Reusable Grocery Bag List that have not demonstrated compliance with all requirements of the legislation, and the associated information that is missing from the proof of certification documents.
- An estimate of the number of regulated reusable bags being distributed in the state annually, and an assessment of the implementation of the provisions of SB 270 to encourage consumers to utilize reusable bags.
- Recommendations for modifications, updates and extensions of SB 270 to further the objectives of the policy to reduce plastic pollution and waste.

Thank you for your attention on this important matter.

Sincerely,



Mark Murray  
Executive Director  
Californians Against Waste

cc: Wendy Harmon, Paulina Kolic, Robert Contreras, and Deak Marschall