

# Single-Use Packaging

## Balancing Economic Practicality with Perceived Environmental Benefits

Packaging serves several functions in modern economies beyond merely distinguishing one brand from its competitors. Packaging also protects products from damage, extends product shelf lives, provides more efficient means to move goods and allows companies to communicate directly with and provide important product information to customers. While packaging provides several critical functions in the market economy, when otherwise recyclable or compostable packaging is not properly disposed of, it becomes waste or pollution that could harm the natural environment.

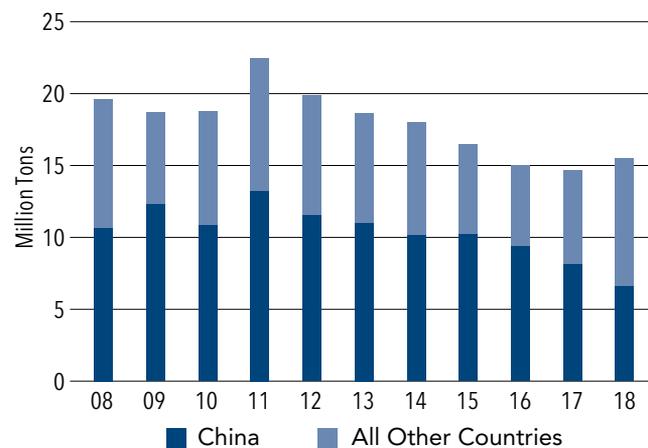
### BACKGROUND

In 2011, the California Legislature passed and Governor Edmund G. Brown Jr. signed AB 341 (Chesbro; D-North Coast; Chapter 476, Statutes of 2011), a law establishing a statewide 75% recycling goal through source reduction, recycling, and composting by 2020 and requiring all businesses and public entities that generate 4 cubic yards or more of waste per week to have a recycling program in place. In addition, multi-family apartments with five or more units are also required to form a recycling program.

Eight years later, California has failed to reach its AB 341 waste diversion goals. To reach the 75% target goal, California would need to reduce an additional 26 million tons annually.

In 2017, China shocked many in the western world by announcing its National Sword policy banning the imports of 24 categories of scrap materials, including low-grade plastics and unsorted mixed paper, and setting strict 0.5% contamination standards for allowable bales of recyclable material. China's

### RECYCLABLES EXPORTED FROM CALIFORNIA PORTS



Source: CalRecycle

National Sword policy substantially disrupted California's recycling markets because for decades, the state relied heavily on China to purchase much of California's recyclable commodities. California exported approximately two-thirds of all curbside collected material to China and other foreign entities. In the last three years, exported recyclables have decreased in California by 1.8 million tons.

This new paradigm in the international recycling marketplace lowered the worldwide price of many scrap materials. What was once a net positive revenue stream for many California local jurisdictions quickly became a significant cost. In response, local jurisdictions raised curbside rates to counteract the declining international demand and value for certain scrap. Local jurisdictions cited China's National Sword policy, rising labor and fuel costs, new infrastructure and compliance with SB 1383 (Lara; D-Bell Gardens; Chapter 395, Statutes of 2016), as the basis for having to raise curbside rates.

SB 1383 established targets to achieve a 50% reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020, and a 75% reduction by 2025. The law provided CalRecycle the authority to adopt regulations setting stringent organic waste disposal reduction targets and to establish

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additional reduction targets for edible food. CalRecycle estimated the cost to implement and build the infrastructure necessary to meet the mandates in SB 1383 would be approximately \$20.9 billion.

**SB 54 / AB 1080**

The Legislature responded in 2019 with the introduction of SB 54 (Allen; D-Santa Monica) and AB 1080 (Gonzalez; D-San Diego), two identical pieces of legislation that mandate unprecedented recycling, source reduction and composting rates for single-use packaging and service ware manufacturers, distributors and retailers.

SB 54 and AB 1080, titled the “California Circular Economy and Plastic Pollution Reduction Act,” were introduced as identical bills containing a plan to reduce and recycle 75% of plastics in California by 2030. Through the legislative process, the bills were amended to focus only on single-use plastic packaging and single-use service ware instead of all single-use plastic products. The bills were further amended to broaden the scope of what is regulated from single-use plastic packaging to all single-use packaging of any material type, rendering the bill material neutral.

The bills contain three primary mandates on manufacturers. First, all single-use packaging and single-use service ware sold or distributed in California must be recyclable or compostable by January 1, 2030. Second, all single-use packaging and single-use service ware sold or distributed in California must be recycled by 75% by 2030. Finally, all single-use packaging and single-use service ware sold or distributed in California must be source reduced to the maximum extent feasible.

The term “single-use packaging” is defined broadly to include all packaging material types, unless otherwise specified, that are placed into the California market (for example, sold, distributed, imported, etc.) and not intended to be refilled or reused by the manufacturer. It includes primary packaging (the material used to hold the product, such as an aluminum soda can), as well as secondary packaging (the material used to contain the primary packaging, such as a cardboard box for soda cans) and tertiary packaging (the material used for bulk handling, such as a palletized load).

The most onerous mandates on the regulated community are the mandated recycling rates and dates in the bills. SB 54 and AB 1080 require CalRecycle to develop regulations by January 1, 2024 requiring producers of single-use packaging and single-use service ware to meet the following phased in recycling rates:

- Not less than 30% for packaging and products manufactured on or after January 1, 2026.

- Not less than 40% for packaging and products manufactured on or after January 1, 2028.

- Not less than 75% for packaging and products manufactured on or after January 1, 2030.

Other requirements in the bill include providing CalRecycle with broad authority to establish Extended Producer Responsibility (EPR) programs and minimum recycled content requirements; requiring regulated entities to register with CalRecycle and report any data that the department “deems necessary” under the penalty of perjury and conditions of sale prohibiting retailers and wholesalers from offering for sale any packaging or products that are not in compliance.

For companies not in compliance, the bill offers the regulated entities a compliance pathway through “Corrective Action Plans” that may include actions such as shifting production away from packaging and product categories that do not meet the recycling rates, reaching a minimum content standard set by the department, or establishing a take-back system or deposit fee system for single-use packaging or priority single-use products that would increase the recycling rate of the material. For regulated entities that fail to enter into or comply with an agreed upon Corrective Action Plan, SB 54 and AB 1080 provide CalRecycle with authority to issue fines of up to \$50,000 per day.

SB 54 and AB 1080 failed to pass off the Assembly and Senate Floors, respectively. The bills are anticipated to be brought back during the 2020 legislative session.

**LACK OF INFRASTRUCTURE AND FUNDING**

For decades, California’s reliance on international markets allowed it to operate with limited recycling infrastructure. The limited infrastructure for managing and recycling material was built largely based on the Beverage Container Recycling Program and each year shrinks as more and more California beverage container recycling centers close. For example, in 2019, California’s largest recycling redemption center operator shut down 284 facilities and laid off 750 employees. When the value of certain scrap materials on the international market collapsed and local jurisdictions and businesses struggled to turn a profit, the repercussions of an underdeveloped recycling infrastructure became glaringly apparent. Without downstream outlets for many otherwise recyclable materials, companies in California began stockpiling scrap materials as they sought to find acceptable markets for the material.

Tens of billions of dollars would be needed to build enough recycling infrastructure to process and divert 75% of all single-use material types. CalRecycle’s Standardized Regulatory Impact



Assessment (SRIA) calculated the estimated direct statewide costs to develop necessary infrastructure to process organic waste to be approximately **\$20.9 billion**. With the scope of SB 54 and AB 1080 and the universe of material types implicated, the cost to build new recycling infrastructure may even dwarf CalRecycle's estimates for short-lived climate pollutants.

Notably, neither SB 54 nor AB 1080 provide any funding mechanism nor direction to CalRecycle regarding new infrastructure. Without that funding and without permit streamlining for these facilities, the regulated entities will likely be unable to comply with the recycling rate mandate. Nevertheless, any funding to build recycling infrastructure would likely be provided through a new tax on single-use packaging. Although a fraction of a penny on all single-use packaging may appear to some to be nominal, the aggregation of fees across California's massive entire economy would increase costs of living in California.

#### **NO STATEWIDE UNIFORMITY IN RECYCLING**

California is home to 482 local jurisdictions, all of which have local control over their waste management systems. Although many local jurisdictions offer single-stream curbside collection of recyclables, some do not offer any curbside recycling services. An

increasing number of local jurisdictions also are passing ordinances banning certain materials, like expanded polystyrene and single-use plastic food ware.

The patchwork of local ordinances must be unified across the state. Companies can design for recyclability and compostability, but they cannot design packaging to comply with 482 different local jurisdiction ordinances. SB 54 and AB 1080 must standardize requirements of local jurisdictions throughout the state so that manufacturers can design for compliance and meet the 75% recycling rate.

#### **CONSUMER BEHAVIOR AND CONTAMINATION**

Manufacturers of single-use packaging lose autonomy over their product and packaging once the customer takes possession, making compliance with SB 54 and AB 1080 uniquely daunting. For manufacturers selling into California and wanting to comply with these bills, a number of steps entirely outside the manufacturers' control must occur.

For example, manufacturers would have to rely on the local jurisdictions to provide curbside collection of all the materials, rely on the consumer to dispose of the material properly, rely on the consumer not to contaminate the material, and rely on the haulers to provide a material recovery facility. If any of these steps break down, manufacturers cannot comply. SB 54 and AB 1080 do not address California's known contamination problem nor provide any consumer education component.

#### **CALCHAMBER POSITION**

The California Chamber of Commerce supports economically practical recycling programs that the regulated community can comply with and which yield environmental benefits. In making these statewide policy decisions about the management of California's waste, the Legislature must balance a plethora of policy impacts on companies and consumers against the perceived environmental benefits. The CalChamber supports maintaining legislative oversight to ensure that any proposed regulations are balanced properly against other state goals and policies.



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