

CalRecycle Seeks Comprehensive Mandatory Statewide Packaging Framework; Will Pursue Legislation in 2018

Background

In 2011, the California Legislature passed and the Governor signed AB 341 (Chesbro; D- North Coast; Chapter 476, Statutes of 2011), establishing a policy goal that not less than 75% of solid waste generated in California be source reduced, recycled, or composted by 2020. AB 341 directs the California Department of Resources Recycling and Recovery (CalRecycle) to develop a statewide strategy to reach the goal and required CalRecycle to submit a report to the Legislature by January 1, 2014, outlining proposed strategies for achieving the goal. AB 341 further mandates recycling by all businesses and public entities that generate four or more cubic yards of solid waste per week and multifamily residential dwellings that have five or more units. Each jurisdiction is required to implement a mandatory commercial recycling program with education, outreach, and monitoring components. CalRecycle estimates California will need to reduce waste disposal by 24 million tons to meet the 75% reduction goal.

In 2017, CalRecycle identified packaging as a focus to meet AB 341's goal and announced it will pursue legislation in 2018 to implement a mandatory, comprehensive strategy to manage all packaging in California with the primary function of decreasing the amount of packaging disposed in landfills. CalRecycle estimates packaging comprises approximately a quarter of the waste stream disposed of each year in California. Notably, however, CalRecycle's own data indicates packaging waste has decreased in the overall disposal stream from 9.5 million tons in 2008 to 8 million tons in 2014.

CalRecycle's goals for packaging reform are to:

- Divert a significant amount of packaging from landfills;
- Promote source reduction, recycling, and higher uses of packaging;
- Address other environmental impacts of discarded packaging, such as greenhouse gas emissions and marine debris; and
- Develop in-state and in-country infrastructure to manage post-consumer packaging.

Packaging serves a number of functions in society, including ensuring safe transport of products, extending the lifespan of

products before use, preventing food waste, containing labeling requirements, and other health protection functions. CalRecycle acknowledges there is no one-size-fits-all policy tool that can be applied to packaging due to the differences in, among other things, materials, recyclability, end-market profitability, and reuse capabilities. Accordingly, CalRecycle will pursue legislation to provide it with broad authority to identify priority products and implement various policy tools within its discretion to achieve its goals.

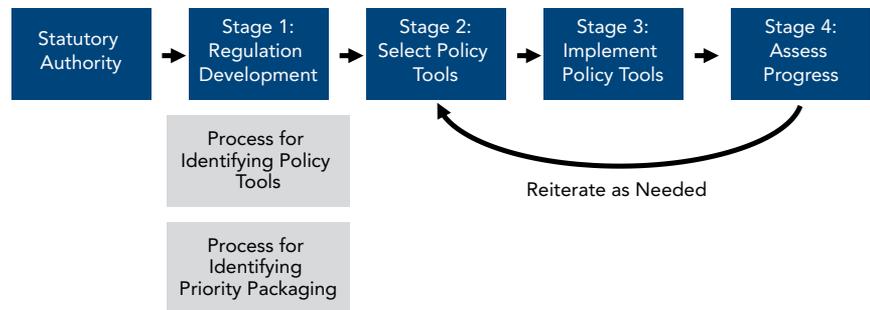
This article summarizes CalRecycle's proposed mandatory packaging reform framework, and discusses the next steps and related concerns.

CalRecycle Proposal

CalRecycle seeks authority to manage all packaging. The term "packaging" is very broadly defined to include all packaging material types, unless otherwise specified, that are placed into the California market (for example, sold, distributed, imported, etc.). 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).

CalRecycle will specifically seek authority to: 1) identify priority packaging for regulation; and 2) exercise broad discretion to select and implement various policy tools to minimize disposal of such priority packaging.

Statewide Packaging Framework



Source: CalRecycle Packaging Reform Workshop (October 10, 2017).

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Process for Identifying Priority Packaging

CalRecycle proposes to promulgate regulations establishing a process to evaluate and prioritize different types of packaging. This would include an analysis of the waste stream and other screening criteria. CalRecycle has identified six specific screening criteria for identifying priority packaging: 1) prevalence in the disposed waste stream; 2) usage trends; 3) current collection infrastructure; 4) current processing infrastructure; 5) greenhouse gas impacts of recycling; and 6) prevalence as waterway and marine debris. The screening criteria would then be applied to a packaging type by assigning a number to each of the six screening criteria with a 1 equaling an answer of high, a 0 equaling an answer of medium, and -1 equaling an answer of low.

After tallying the sum of those assigned scores across the six screening criteria for each packaging type, CalRecycle would use the sum as a “final prioritization” score to identify priority packaging for regulation. Although CalRecycle notes—in its CalRecycle Packaging Reform Workshop Background Document dated October 10, 2017—that, when implementing the screening criteria, it may “include an opportunity for CalRecycle to selectively exempt companies that have reached the same goals as those set by the State in reducing packaging waste through voluntary efforts,” voluntary compliance is not an express factor in the screening evaluation.

CalRecycle purportedly used this prioritization scheme to identify six priority packaging materials for its initial regulatory response within two categories of packaging types: 1) fibers: uncoated corrugated cardboard, waxed cardboard, and aseptic containers and cartons; and 2) plastics: film plastic, expanded polystyrene, and pouches. These packaging materials may be prioritized for initial action under the mandatory policy framework via a phased approach.

13 Proposed Policy Tools

The policy tools under consideration may apply to a variety of different responsible entities, including manufacturers, distributors, retailers, local governments, waste haulers, and consumers. CalRecycle has identified 13 proposed policy tools for use and application to priority packaging. Eight of the 13 proposed policy tools are described as tools for all packaging. These eight proposed policy tools are listed below:

- **Source Reduction:** This policy tool would require manufacturers and brand owners to reduce packaging weight, volume, or quantity in relation to an established baseline. CalRecycle specifically states “commercial entities using packaging, such as restaurants and stores, could be required to use reusable packaging for their transport and shipping, and incentivize consumers to use reusable packaging such as to-go containers.”
- **Extended Producer Responsibility (EPR):** EPR places requirements on manufacturers to manage some or all aspects of their products at end-of-life. CalRecycle believes this policy tool is best applied to a broad set of packaging rather than individual packaging materials due to the lack of economies of scale associated with separately collecting and managing different types of packaging. The tool could be implemented in two ways: 1)

Identifying Priority Packaging

Example application of screening criteria to three plastic categories:

	Film Plastic	PET Containers	HDPE Containers
1. Prevalence in Disposed Waste Stream	1	0	-1
2. Usage Trends	1	1	1
3. Current Collection Infrastructure	1	-1	-1
4. Current Processing Infrastructure	1	-1	-1
5. Greenhouse Gas Impacts of Recycling	0	0	-1
6. Waterway and Marine Debris	1	0	-1
Final Prioritization	5	-1	-4

For individual criteria, priority is assigned as 1 (high), 0 (medium), or -1 (low).

Source: CalRecycle Packaging Reform Workshop (October 10, 2017).

comprehensively with manufacturers responsible for designing, financing, and implementing a program to manage packaging with enforceable goals and government oversight; or 2) limited to certain elements such as financing and education.

- **Pay As You Throw (PAYT):** PAYT imposes variable rates on waste generators based on the amount disposed per household or business. The more material disposed of, the higher the rate.
- **Increased Landfill Tipping Fee:** This tool would increase the cost for each ton of material (not just packaging) disposed at landfills to provide an economic incentive to recycle rather than dispose in landfills, and to finance expanded or enhanced collection and processing infrastructure.
- **Advanced Recycling Fee:** A fee assessed on materials based on their relative environmental impact and cost to dispose to support infrastructure, statewide education, and other initiatives for managing those products.
- **Statewide List of Recyclables:** This tool would establish a standard list of recyclable or compostable packaging and would require all residential collection programs to accept and process those types of materials. This tool would further institute bans on certain packaging materials at the point of collection.
- **Recyclable or Compostable Design:** This tool would require packaging sold or distributed in California to meet minimum adopted recycling or composting standards.
- **Labeling Requirements:** This tool would require manufacturers to include certain information on labels of packaging sold or distributed in California, such as recyclability or end-of-life handling. CalRecycle believes this tool must be paired with other tools to achieve sufficient diversion of packaging materials from landfills.

The remaining five proposed policy tools are described as tools for specific packaging:

- **Minimum Post-Consumer Recycled Content Requirement:** This tool would require packaging sold or distributed in California to contain a minimum amount of post-consumer recycled material. California applies this to certain packaging already, and would expand the requirement to additional packaging types.

- **Landfill Bans:** This tool would ban certain recyclable or compostable packaging from being accepted at landfills in California. It would also establish enforcement levels.

- **Deposit System:** A deposit program requires consumers to pay an upfront deposit at the time of purchase—similar to the beverage container recycling program.

- **Packaging Product Sales Bans:** This tool would prohibit the sale and distribution of certain packaging in California.

- **Materials Management Fees:** This tool would impose a single, flat fee on every product with packaging sold in California to support infrastructure, education, cleanup, research and development, and other statewide initiatives to manage packaging.

Six Identified Priority Packaging Materials and Associated Proposed Policy Tools

Despite CalRecycle’s acknowledgment that it currently lacks the authority to regulate packaging as proposed, it nonetheless proceeded with an analysis of packaging materials in accordance with its packaging reform proposal to identify “priority packaging” for initial action (should it receive legislative authority to do so). Its packaging reform proposal identifies six packaging materials as “priority packaging” for regulation with associated proposed policy tools to minimize disposal in landfills:

- **Uncoated Corrugated Cardboard.** Proposed policy tools identified: source reduction, funding mechanisms (advanced recycling fees, PAYT, or increased landfill tipping fees), and minimum post-consumer recycled content requirements.

- **Waxed Cardboard.** Proposed policy tools identified: recyclable or compostable design, minimum post-consumer recycled content requirements, labeling requirements stating the material is not recyclable, and source reduction pushing substitutions.

- **Aseptic Containers and Cartons.** Proposed policy tools identified: funding mechanisms (advanced recycling fees, PAYT, deposit systems, or increased landfill tipping fees), and labeling requirements.

- **Film Plastic.** Proposed policy tools identified: funding mechanisms (advanced recycling fees, PAYT, increased landfill tipping fees, or EPR) coupled with source reduction/separation; in the alternative, label requirements.

- **Expanded Polystyrene.** Proposed policy tools identified: funding mechanisms (advanced disposal fees, PAYT, or EPR) coupled with private financing; in the alternative, EPR with labeling requirements or listing on a standard list of recyclable packaging; and if mandates are not achieved, product sales ban.

- **Pouches.** Proposed policy tools identified: funding mechanisms (advanced recycling fees, PAYT, or increased landfill tipping fees), and minimum post-consumer recycled content requirements; and if not successful could face labeling requirements and listing on a standard list of recyclable packaging as not recyclable.

Next Steps

Following the workshop on October 10, 2017, CalRecycle sought feedback on:

- How could a broad policy framework work?

- How could specific policy tools be implemented within that framework?

- How should the framework overall be implemented?

- How should progress and success be measured?

- What enforcement measures should be used under the framework?

- How could the policy framework respond to changes in the marketplace?

CalRecycle anticipates releasing a set of draft recommendations in February or March 2018. The draft recommendations will include a discussion regarding the implementation of policy tools and methods for assessing progress regarding such implementation, including suggestions for metrics and goals. CalRecycle staff will hold a workshop to discuss the draft recommendations, and will then proceed with formal recommendations for consideration by the CalRecycle Director.

Challenges/Concerns About CalRecycle Proposal

Although AB 341’s goal is certainly laudable, there are several concerns and challenges with CalRecycle’s proposed command-and-control approach to packaging, including but not limited to:

- **The 75% reduction goal is an arbitrary target** that was not based on science and was established without regard to and consideration of the cost impacts and feasibility of achieving the goal. CalRecycle’s focus on packaging reform in meeting this goal also has not been evaluated in terms of cost impacts or feasibility.

- **The proposal would delegate substantial authority to CalRecycle.** For example, in 2017, Senator Ben Allen (D-Santa Monica) introduced SB 705, which would prohibit food vendors from using take-out food containers made from polystyrene foam. The mandate would have substantial fiscal impacts on businesses and consumers in California, leading to the California Chamber of Commerce identifying the bill as a job killer.

SB 705 was the subject of significant debate in the Legislature due to the policy concerns associated with the proposed ban, including the cost and availability of, and potential impacts associated with alternatives, resulting in Senator Allen moving the bill to the inactive file. Under its current proposal, CalRecycle would have the ability to impose product bans on packaging without engaging in these types of policy debates when such decisions will have direct impacts on elected officials’ constituents.

- **CalRecycle’s discretionary decisions will have a disproportionate impact on local jurisdictions.** Recycling generally is considered a local issue, driven by local concerns. Local governments have significant variations in curbside operations and recycling infrastructure. CalRecycle’s proposed policy tools may affect local jurisdictions differently depending on the associated infrastructure needs—for example, a standard list of recyclable packaging would require all residential collection programs to accept and process the same types of recyclable materials, regardless of the programs’ existing infrastructure capabilities. Additionally, CalRecycle’s analysis fails to account for the different kinds of waste streams in rural areas of the state.

- **CalRecycle has acknowledged that its focus is singular**

with respect to packaging reform: reducing disposal in/diverting material from landfills. In this regard, it declined to include additional proposed policy tools in its proposal based on perceived inconsistency with this singular focus, despite its acknowledgment that such proposed tools are important to consider (for example, product life cycle, packaging's low carbon fuel potential, and the existing level of recovery and capacity available for additional recovery). CalRecycle's narrow, singular focus with respect to packaging reform does not comport with informed decision-making as proposed, especially given the various policy impacts that will arise from the implementation of the proposed policy tools and selection of priority packaging.

A holistic approach to the waste stream would be more effective in meeting environmental goals. For example, in some cases, it may be best to put certain packaging materials in well-designed landfills given their health benefits and the unavailability for other recycling efforts. Restrictions on landfill disposal of packaging waste could also lead to increased disposal into the environment, waterways, and ocean.

- **The data relied upon by CalRecycle in developing the current proposal raises several concerns.** For example, CalRecycle relied on data relating to ocean debris, which most likely includes information on packaging disposed of around the world—not just packaging sold and distributed in California. Ocean debris is a littering issue, not a material selection issue. In addition, the State Water Resources Control Board recently adopted trash amendments to the Total Maximum Daily Loads for Water Quality, requiring Regional Water Quality Control Board permits to prohibit trash in stormwater and non-stormwater discharges. The effects of these amendments may have an impact on the packaging levels in ocean debris, which have not been factored into CalRecycle's proposed priority packaging analysis. Additionally, there are concerns regarding the findings of CalRecycle's waste characterization study.

- **International commodity markets have direct impacts on recycling efforts,** which should be taken into account. California exports a significant volume of recyclable materials annually. Thus, California's management of recyclable materials depends on and operates within a global commodities market. Indeed, CalRecycle estimates California annually exports around 11 million tons of California-derived recyclable

materials (totaling \$3.2 billion) to foreign markets, and that the exported recyclable materials account for approximately one-third of all non-disposed material generated in California each year. China is the largest export market for recyclables generated in the United States. In 2017, China notified the World Trade Organization of its intent to address illegal imports and prohibit the import of certain solid wastes and scrap, including mixed paper and plastics, beginning January 1, 2018. In addition, China announced new and more stringent contamination standards applicable to recyclable imports.

When changes occur within the global commodities market, there is a direct impact on California's ability to meet its recycling goals. Command-and-control protocols may not allow for flexibility in adapting to international commodity markets, as needed. With the decrease of international export markets, California and other jurisdictions will need to look at internal markets for the use of recycled materials. Although this is possible, it will take time to develop and will be expensive.

- **CalRecycle will need to develop detailed and specific definitions for targeted products,** which will be difficult to specify and differentiate from non-packaging applications.

CalChamber Position

The CalChamber supports economically practical recycling programs that yield environmental benefits, and the underlying intent of AB 341. Statewide policy decisions are, however, best left to the Legislature rather than administrative agencies. Members of the California Senate and Assembly are elected officials accountable to their constituents, whereas regulators in administrative agencies are not. In making statewide policy decisions, the members of the Legislature must balance various policy impacts. An administrative agency's focus is, in contrast, limited to its function and statutory directive.

The CalChamber believes it is imprudent to delegate broad discretionary authority with several important statewide and local impacts to a regulatory agency with a narrow directive. An administrative agency's actions will necessarily be guided by the limited scope of the lens through which it views a problem or challenge. Accordingly, the CalChamber does not support the broad statutory authority CalRecycle proposes to seek in 2018.

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