November 4, 2024

California Department of Resources and Recycling
SB 54 Regulation Implementation Team
Packaging EPR Section Regulations Unit
Legal Affairs Office

Subject: **SB 54 Plastic Pollution Prevention and Packaging Producer Responsibility Act (Act) Regulations**

Dear CalRecycle,

We would like to thank CalRecycle for the opportunity to submit comments on the SB 54 Regulations released on October 14, 2024, as part of the formal rulemaking process. We are thankful that CalRecycle extended the original 15-day comment period to provide for an additional six days as it is helpful at ensuring stakeholders have more time to digest and comment thoughtfully on the immense changes made to the regulations since we last saw them in May. However, it has also been during a contentious election season and has been very challenging to review so many changes and their impacts in such a short period of time and we strongly advise that there be another comment period after this one.

We appreciate CalRecycle's efforts to analyze and incorporate changes based on the 2,500+ comments received during the first formal comment period which closed on May 8. It is clear the CalRecycle staff put careful thought into the revisions. Many sections of the revised regulations give much of the needed clarity we recommended in our first formal comment letter, and we look forward to reviewing the Statement of Reasons to better understand why some of our initial comments were not addressed. The comments offered below represent our collective primary concerns with the revised regulations. These comments focus primarily on areas of the regulations that have changed (underline or strikeout), as we were discouraged from commenting again if we have already registered our concerns about that language. However, some sections are important to us and were not yet addressed.

These comments were finalized by NSAC staff after many meetings with broad groups of stakeholders including our SB54 working group which meets to share information and crowd source input. Only those who agree with all the comments signed onto this letter, which was not finished until today, so few had much time to sign on. Again, there was not a lot of time to

develop thorough comments and ensure we understood the full ramifications of the draft regulations or our recommendations.

Our comments are as follows:

Article 1: Definitions

Section 18980.1(a)(2) - "Alternative collection": Pursuant to PRC Section 40000, et seq., jurisdictions have discretion in how to handle solid waste programs, and therefore should remain central in decision making around programs and services operating in their jurisdiction under SB 54. The introduction of alternative collections systems, while they may be beneficial or necessary in some cases, should not disrupt local collection programs or be implemented without the consent of local jurisdictions. Otherwise, there is an increased risk of consumer confusion as well as of impact on local government costs and revenues.

> **Comment 1a: We recommend that CalRecycle add language to the regulations acknowledging that local jurisdictions, or their designee(s), retain the right to be the primary sponsor of alternative collection programs, if desired.** We further recommend that the PRO be permitted to sponsor or implement an alternative collection program, only after the local jurisdiction declines to sponsor the program and after the PRO obtains written approval from the jurisdiction on the proposed alternative collection program. There should be an attempt to harmonize alternative collection programs across the state.

Section 18980.1(a)(27)(D) – "Washable and sufficiently washable":

> **Comment 1b:** To ensure reusable systems are not held to a higher standard than single use plastic, we recommend alignment with a standard without a specific number of recommended cycles such as the RESOLVE's Global Alliance to Advance Reuse (PR3) Project, which is in development. We recommend using this revised text: "Sufficiently durable means that the package has been tested & verified against a reputable standard such as, but not limited to, RESOLVE's PR3 Project." We suggest CalRecycle re-evaluate this standard and update, if necessary, in two years.

Section 18980.1(a)(27)(D)(ii) – *"For food service ware, it maintains its shape, structure, and function after 780 cycles in a cleaning and sanitizing process that complies with the requirements of Chapter 5 of Part 7 of Division 104 of the Health and Safety Code (commencing with section 14095), as demonstrated by test results from a laboratory having an ISO/IEC 17025:2017 accreditation issued by a body described in paragraph (1) of subdivision (b) of section 18981."*

> **Comment 1c: We recommend adding language that clarifies that assumptions for certain dishware like glass, ceramic, stainless steel, and other known reusable dishware for dine-in**, meets this criterion without requiring the certification, which would make it almost impossible for small businesses to comply.

Section 18980.1(a)(17) – "Producer":

Comment 1d: We recommend adding enough clarity that any potential entity can determine easily if they meet the definition of producer or not. The success of any EPR policy, including SB 54, starts with clearly defining the obligated parties and the requirements they must meet. To support producer compliance, the regulations must remove any ambiguity about who the obligated producer is. There can be no doubt about who the producer is for the covered material, and it is essential that there be only one obligated producer with respect to each product. SB 54 defines the "producer" in PRC 42041(w), and the regulations must set forth consistent and complementary provisions ensuring that definition is clear. This includes an objective standard to clearly identify who is the obligated producer in the supply chain to support efficient producer identification, registration, reporting, and fee payments.

Article 2: Covered Material and Covered Material Categories

Section 18980.2. Categorically Excluded Materials: (b)2 includes language that, *""Drugs" as defined under subdivision (g) of section 321 of Title21 of the US Code includes over the counter drugs and drugs that require prescriptions pursuant to paragraph (1) of subdivision (b) of section 353 of Title 21 of the US Code."*

Comment 2a: We recommend that CalRecycle remove this added language expanding excluded products to include Over the Counter (OTC) drugs. We are concerned that the statute was clear in only specifically exempting "prescription drugs" in PRC Section 42041(2)(A)(i). Adding OTC drugs is a significant expansion of the exemption allowed in statute, and we believe is beyond the authority of CalRecycle to change. We do not support expanding the exclusion to include OTCs, which would prevent a significant sector of packaging from being covered under the Act.

Section 18980.2.1. Exclusion of Reusable and Refillable Packaging and Food Service Ware:

Comment 2b: We urge CalRecycle update (a)(4) to read: "*(a) (4) For a packaging or food service ware item to be considered explicitly designed and marketed to be utilized multiple times according to subparagraph (A) of paragraphs (1) and (2) of subdivision (af) of section 42041 of the Public Resources Code, the item must satisfy the following or similar criteria adopted by ISO, ANSI, or other global or national standards organizations."* PR3 Project's draft standards do require the words "reuse" or "returnable", including requirements for legibility per ADA guidelines.

Comment 2c: We urge CalRecycle to include a phase-in timeline to allow existing reusable packaging systems time to adapt to the new requirements. There are currently millions of reusable packaging items in circulation (e.g., bread trays, milk crates, warehouse totes, etc.) that would be disqualified as reusable should these requirements take immediate effect. Therefore, we suggest clarifying that this section applies to reusable packaging and food ware manufactured in 2026 or later.

(a)(4)(A): *"If food service ware, the item itself must permanently, clearly, and conspicuously bear the word "reusable," "refillable," "reuse," or "refill," and the primary packaging, if any, associated with it must prominently display the same word. If the food service item itself or its primary packaging, if any, cannot reasonably be marked in such a manner because of size or technical restrictions, markings shall be as prominent as reasonably possible and may be non-permanent. A readily understandable explanatory logo may be used in lieu of one of the acceptable words if text cannot reasonably be used in a legible, conspicuous manner. Requirements of this clause that cannot be met due to size or technical constraints shall not apply."*

> **Comment 2d: Please add language clarifying that in the case that *"requirements of this clause that cannot be met due to size or technical constraints shall not apply",* producer(s) shall make this obvious in another way.**

(a)(4)(D): "*All advertisements and other marketing related to the item by the producer must explicitly describe the item as "reusable" or "refillable" or otherwise clearly explain that the item is reusable or refillable.*"

> **Comment 2e: Please add the word "returnable" at the end of the sentence to read "...otherwise clearly explain that the item is reusable, refillable, or <u>returnable.</u>"**

(a)(4)(E)(ii): *"Other reasonable means may include marking the item or its packaging with a URL, a QR code (a matrix code readable by commonplace electronic devices), or a phone number that readily can be used to obtain the instructions"*

> **Comment 2f: We recommend the PRO Plan outline how these resources will be maintained to be accurate and up to date no less than twice per year.** Any phone number, QR code, or other method of obtaining instructions should be maintained.

(a)(4)(E)(iv): *"Instructions shall be provided in English and **may** be accompanied by the same instructions in any other language."*

> **Comment 2g: We recommend the word "may" be changed to "shall" regarding all electronic formats in a "google translate" option ensuring any English is their second language customer to be able to understand the instructions.**

(a)(5)(A): *"Be sufficiently durable to remain usable when used multiple times over at least three years following its initial use. Such repeated usage must be for its original intended purpose with the same product or, for packaging or food service ware that is reused or refilled by the producer, for <u>any purposeful packaging</u> use in a supply chain. For food service ware, this requirement shall not apply if the food service ware is shown to be, on average, subjected to 780 or more cycles in a cleaning and sanitization process, as described in clause (ii) of subparagraph (D) of paragraph (27) of subdivision (a) of section 18980.1, within the first three years of use."*

Comment 2h: We recommend replacing the phrase "purposeful packaging" with the word 'similar.' Purposeful packaging is not defined.

(a)(6): "*For purposes of subparagraph (C) of paragraphs (1) and (2) of subdivision (af) of section 42041 of the Public Resources Code, packaging or food service ware can be safely reused or refilled by the producer or consumer, as applicable, <u>if such reuse or refill does not pose an additional significant health or safety risk to the consumer or additional risk of significant effect on the environment</u> compared to its single-use counterpart and occurs under circumstances that comply with all applicable state, local, and federal laws and regulations concerning health and safety. Notwithstanding the foregoing, if packaging or food service ware cannot be reused or refilled without unreasonable risk to health or safety or of significant effect on the environment, it shall be considered not safely reusable or refillable, regardless of applicable laws and regulations."*

Comment 2i: The lifecycle assessment methodology should be 100% transparent to the public and CalRecycle should be the arbiter on which study is used should there be conflicting studies and results. The environmental impact categories should be approved by CalRecycle, or CalRecycle should be allowed to reject the results of the study if they determined important impact categories were not included in the methodology.

(a)(7)(C): *"If the item was delivered directly to a consumer, return of the <u>item</u> must be facilitated through the same means (such as the same website) that the consumer used to acquire it and must not require the consumer to travel to a location other than the delivery location."*

Comment 2j: **CalRecycle should rewrite this section to be fair, attainable, and actionable/convenient. The <u>item</u> should be clarified to be the packaging.** The draft regulations hold reuse systems to a much higher standard than producers are held to for recycling, which is a perverse incentive.

(a)(7)(D): *"Returning the item must not impose limitations or requirements on consumers, such as the use of technologies, access restrictions, or contribution of materials other than the item, different than those involved in the acquisition of the item."*

Comment 2k: These measures are in place to limit bad actors, so a delicate balance is needed to avoid unintended hindrances and ensure pathways for innovative reuse solutions are achievable.

(a)(8)(A)(i): *"Four."*

Comment 2l: We recommend making this number at least five to match the Colorado requirements unless there is an informed reason not to do so.

(a)(8)(A)(ii):*"For items partially or wholly constituting plastic, the number of uses or fills necessary so that 75% less plastic waste is generated overall through the use, reuse or refill, and disposal of one of the items compared to the use and disposal of that number of units of a single-use version of the item designated pursuant to subparagraphs (B) through (F). The number shall*

*be calculated by multiplying four by the amount of plastic, by weight, wholly or partially constituting each item divided by the amount of plastic, by weight, wholly or partially constituting the designated single-use version. If the item and designated single-use version are not the same size, the amount of plastic used by the designated version shall be scaled up or down, whichever results in a weight closest to the items' weight, according to the ratio between the sizes. For items that are used to contain or hold goods, such as cups, boxes, and shipping envelopes, size is the items' capacity, not the size of the item overall***."***

Comment 2m: We recommend CalRecycle hold a workshop for all stakeholders to determine a more informed and vetted determination. We believe that this important section requires more time and deliberation by the stakeholders. This section is unclear with terms, which could create a potential loophole for materials not to meet reuse and refill standards as intended. It is very confusing, and we are unclear how this section will work.

(a)(8)(C)(vi)(I): "*The version composed of the percentage plastic, by weight, closest to the items' percentage of plastic, by weight, shall be designated."*

Comment 2n: This is unclear, could the department please clarify this with an example?

Section 18980.2.4. Exemptions for Certain Covered Materials

Comment 2o: Similar to Comment 1a, we recommend adding language to the regulations stating local jurisdictions retain the right to be the primary sponsor of alternative collection programs, if desired. Jurisdictions have the responsibility for handling solid waste in their communities and should remain central to decision-making about programs in their jurisdictions.

Article 3: Evaluations of Covered Material and Covered Material Categories

Comment 3a: It is imperative for rebuilding consumer trust in the recycling system that claims of recycled content for a given package can be interpreted as actual recycled content in that specific package. We appreciate that Section 18980.3.4 of the proposed regulations has been updated to align with post-consumer recycled content methodology used by the Association of Plastics Recyclers (APR) and ensure consistent methodologies are set for calculating recycled content in covered materials. However, the changes made to Section 18980.3.2(b)(1) in the proposed regulations create a possibility that producers would be able to use free-attribution mass-balance methodologies in the calculation of the recycling rate. This does not align with similar processes that are used to determine the recyclability of covered material categories in SB 54, nor does it align with the intent of SB 54 and SB 343 to reduce consumer confusion about recycling.

Comment 3b: We recommend that in Section 18980.3.2(b)(1), the language specifying how the recycling rate for covered material will be calculated is modified (with underline language to be added) to state, *"Recycling rate shall be calculated as the weight of covered material <u>in a particular covered material category</u> that is recycled divided by the sum of the total weight of covered material <u>in this covered material category</u> disposed, as described in paragraph (3), and the weight of covered material <u>in this covered material</u>*

category recycled, as described in paragraph (2)" to clarify that mass-balance methodologies will not be able to be used and therefore require the evaluation of the recycling rate of each covered material separately and distinctly. We believe this aligns with the intent of statute.

Comment 3c: Modify Section 18980.3.2(f) to read new covered material categories "are not assumed to achieve the required [recycling] rate." This approach helps to ensure local jurisdictions are not required to accept materials that do not have established recycling programs across California and limits potential public confusion when new materials enter the market. Telling the public that a new material is assumed to be recyclable when there is not sufficient data to support that claim goes against the intent to reduce public confusion and increase recycling transparency. Furthermore, our recommendation aligns with Section 18980.3.2(e) which states materials with recycling rates that cannot be calculated because data have not been reported are assumed "not to meet the required [recycling] rate…."

Section 18980.3.3. Eligibility to be Labeled Compostable:

Comment 3d: We have concerns regarding the complex language in the regulations related to the designation of compostability of packaging. Some facilities do not have the ability to process compostable packaging, and it would require extensive time and resources to do so, if feasible. Many would require several years of lead time to plan, permit, fund/finance, purchase additional equipment, hire staff, and request payment for the costs to prepare to accept compostable packaging.

Section 18980.3.6. Review of Certain Technologies:

Comment 3e: We support the Advisory Board comment: "Review of Certain Technologies" – We appreciate the added section to the regulations. Overall, CalRecycle should provide further clarity on the regulations about whether some of the common forms of technologies that exist now are acceptable forms of recycling. Technologies identified in Senator Allen's Letter to the Journal include and provide additional context on the legislative intent regarding the implementation of SB 54 and the definition of "recycling". Furthermore, if CalRecycle could further specify the extent to which production of fuels is considered 'recycled products', or hazardous wastes, or unacceptable products of a recycling technology, that could further clarify what technologies might be evaluated under this section. However, there should also be a pathway to the evaluation of new technologies that may be introduced in the future to be analyzed and considered via peer-reviewed studies as described in Section 18980.3.6.

Comment 3f: Recommend this additional language to the first sentence: "confirms that the technology does not generate a significant amount of hazardous waste while minimizing generation of greenhouse gasses, environmental impacts, environmental justice impacts, and public health impacts. Regulations section 189980.3.6(a) should include all criteria described under PRC 42041(aa)(5) to provide clear direction on whether identified technologies are deemed as "recycling."

Article 4: Responsible End Markets

Section 18980.4. Responsible End Market Criteria

Comment 4a: (a)(4)(B) must be amended to allow for normal decomposition levels to count as diversion. The language in this section, "*must ensure that it fully biologically decomposes*" sets an unachievable standard for the processing of many compostable materials and will prevent any composters from being responsible end markets for compostable covered materials. This standard is unachievable for paper, fiber, wood, or other organic covered materials; residual linings and cellulose will always be present in finished compost produced from those types of materials.

Section 18980.4.1. End Market Identification

Comment 4b: We recommend making this section more transparent. We appreciate the addition of making end market and intermediate supply chain entity records public documents under the California Public Records Act in (c); however, this language does not fully reflect the processes and data needs of local jurisdictions in implementing SB 54 and does not sufficiently ensure public transparency. This transparency is essential for local jurisdictions and CalRecycle to assess if/how producer funds are being implemented to effectively cover appropriate local jurisdiction costs and protect ratepayers, which is a fundamental intention of the law. In the current version of the regulations, a jurisdiction would need to contact CalRecycle to request that CalRecycle request the records from the PRO; and, assuming CalRecycle agrees, the jurisdiction would need to submit an additional public records request for CalRecycle to process. This creates an unnecessary administrative burden for both CalRecycle and local jurisdictions and does not provide full assurance that jurisdictions will get the information they need in a timely manner.

Comment 4c: We recommend inclusion of language to require the PRO to develop a publicly accessible website to disclose all records set forth in section 18980.4.1(c), as well as disclosure of payments made to responsible end markets, intermediate supply chain entities including recycling service providers collecting covered materials, recycling service providers processing compostable materials, alternative collection systems, and local jurisdictions. Data would need to be posted in a manner that protects trade secrets.

Section 18980.4.3(a) of the proposed regulations outlines the requirement for the PRO and Independent Producers to "*support the establishment, expansion, and continued existence of responsible end markets... by providing financial support to local jurisdictions... and other entities that provide services used for the diversion of materials*." Subparagraph (2) of this section states the requirement that a PRO Plan or Independent Producer Plan must establish that the entity will *"Provide financial support to end markets as necessary to develop responsible end markets and ensure that they continue to satisfy to assist them in satisfying the standards specified in section 18980.4(a)."* The language *"decide whether to provide it*" was added but is

inconsistent with the intent outlined prior versions of the regulations and in statute, which requires the PRO to provide this support to develop and maintain responsible end markets.

Comment 4d: We recommend that the words "decide whether to provide it" be deleted from Section 18980.4.3(a)(2) of the proposed regulations. This will avoid any potential unintended consequences that could be realized by including this language, which, as currently written, may allow the PRO to avoid its statutory obligation to provide financial support.

(a): *"A PRO or Independent Producer must support the establishment, expansion, and continued existence of responsible end markets sufficient to satisfy the obligations of the PRO or Independent Producer under the Act, in the manner set forth in their approved plans. Each plan must establish, at a minimum, how the PRO or Independent Producer will do the following:"*

Comment 4e: Recommendation to add in "consistent with the waste hierarchy established in PRC Section 40051" to read: "Each plan, consistent with the waste hierarchy established in PRC Section 40051, must establish, at a minimum, how the PRO or Independent Producer will do the following:"

Article 5: Requirements for Producers

18980.5. Producer Compliance: Section 18980.5(a) - Producer Registration

Comment 5a: We recommend moving the date for producer registration to April 1, 2025, from the current draft date of July 1, 2025. Early producer registration is essential for the successful implementation of SB 54. Although an improvement over January 1, 2027, the proposed registration deadline of July 1, 2025, does not provide sufficient time for producers to prepare and report supply and source reduction data to the PRO for the finalization of the producer responsibility Plan for submission to the Advisory Board by April 1, 2026.

To get the necessary producer data to support the development of the Plan, it is imperative that CalRecycle meet its statutory deadline to complete the regulations by January 1, 2025. The next major deadline is the submission of the Plan to the Advisory Board on April 1, 2026. At minimum, one full year is required to develop the source reduction plan, prepare producers for reporting, and more.

Article 6: Requirements for the Producer Responsibility Organization

Section 18980.6.7(a)(5) – Costs Reimbursed to the Department

Comment 6a: Add language that administering the Advisory Board is part of CalRecycle's costs. Please revise 18980.6.7(a)(5) to include the following: "Costs shall also include the Department's administrative support of the Advisory Board,

including documenting minutes, provision of legal guidance related to Bagley-Keene compliance and other legal matters, travel expenses associated with periodically holding Advisory Board meetings in different parts of the state, providing meeting location/space, public noticing of meetings, scheduling assistance, conducting roll calls, providing teleconference assistance/access, and meeting facilitation assistance." PRC Section 42070(c) states that CalRecycle shall provide administrative support to the Advisory Board. The regulations provide an important opportunity to clarify what "administrative support" entails.

Article 8: Producer Responsibility Plan Requirements

Section 18980.8. Producer Responsibility Plan:

Comment 8a: Change "reimbursable" to "payment" throughout the regulations and provide more detail on how payments will be made. The regulations use the term "reimbursement" whereas the PRC sections referenced in the regulations refer to payments and funding incurred costs. There is still a lack of detail in determining what costs will be paid to jurisdictions for increased costs due to implementation of SB 54. As drafted, all approval for payment lies with the PRO, with no oversight by CalRecycle, and there lacks a timeline for payment other than, "the process must require the determination.... and "reimbursement" (which should be 'payment') to be made within a reasonable period."

Section 18980.8(g) - Covered Costs and Timeframe: To meet CalRecycle's statutory requirement for the regulations to ensure recovery of local jurisdiction costs, it is critical that the regulations clarify the types of costs incurred by local jurisdictions and ensure the selected timeframe accurately reflects how such costs are incurred. We appreciate CalRecycle adding clarification in Section 18980.8(g) on the reimbursement timeline; however, consideration of costs only after January 1, 2023, is not reflective of actual system costs and therefore would not achieve SB 54's goal of shifting the burden of costs from local jurisdictions and RSPs to the producers. In response to existing law such as AB 939 and SB 1383, jurisdictions and RSPs have made significant investments in the recycling system. While the regulations assert that costs before January 1, 2023 "need not be reimbursed," the PRO will certainly need to rely on the existing recycling infrastructure and programs established and funded by jurisdictions and RSPs to meet the targets set forth in SB 54 and many of those assets are still being paid off. Not factoring in such capital investments, in accordance with a clear mechanism, may also have the unintended consequence of hurting prior early adopters and discouraging local programs from proactive efforts. We recognize the complexity of determining the timeline for these costs and do not anticipate that the PRO will fund every possible pre-existing cost for local jurisdictions. However, some combination of existing and pre-existing costs that are covered will be necessary for compliance with SB 54. For example, transportation of covered materials will involve using trucks that are currently operating but were purchased years ago. Transportation is explicitly called out as a cost that is required to be covered under SB 54, PRC Sections 42051.1(j) and 42060(a)(1), and therefore some mechanism of payment for these costs will be necessary. Similarly, there

will be new vehicle costs, particularly as jurisdictions and RSPs are required to comply with new laws and switch to zero emission vehicles with higher operating costs. Both pre-existing and new costs will need to be factored into transportation and other capital costs with a similar dynamic (infrastructure, facilities, collection, etc.). There are mechanisms for calculating such costs in a manner that is reasonable to all parties, as described below.

Comment 8b: We suggest that historic, or "pre-existing," costs incurred by local jurisdictions prior to January 1, 2023 be focused on specific capital investments (infrastructure, facilities, vehicles, etc.), which may be paid for as the cost of investments depreciated over five years or calculated as a dollar per ton amount based on the annualized depreciation value of such investment, which would be included with operating cost payments.

(g)(2): Describes the costs that are reimbursable under the regulations. However, additional detail is needed to ensure costs are accurately reflected and paid for or reimbursed. One type of allowable cost, under subdivision (C), is *"A cost specifically approved in advance by the PRO or independent producer as a reimbursable cost."* This language is overly broad and does not ensure adequate protections for local jurisdictions and RSPs in getting timely payment of their costs, not just a reimbursement. This broad discretion also allows the PRO to be selective in which entities, facilities, or technologies receive payment, which may have the unintended consequence of creating unfair advantages in the marketplace that compound over time. Additionally, lack of clarity in these provisions risks an increase in future disputes over which costs should be covered, creating additional burdens for all parties.

Comment 8c: We recommend including a clear list of some of the costs that would be considered approved under that subdivision to limit overly broad discretion by the PRO, increase objectivity, and reduce unnecessary disputes. However, the nature of recycling systems is fixed and includes the other elements specifically described in PRC 42051.1(j)(1)(B) that are subject to full cost funding in the PRO budget:

> *"Costs associated with this chapter incurred by local jurisdictions, recycling service providers, and other collection programs, and costs related to consumer outreach and education; the transportation of covered materials to a materials recovery facility, broker, or viable responsible end market; cleaning, sorting, aggregating, and baling covered materials as necessary to bring those materials to a viable responsible end market; waste stream sampling and reporting required by this chapter for local governments; costs incurred to educate ratepayers to improve the preparation and sorting of covered material; and improvements to collection, sorting, decontamination, remanufacturing, and other infrastructure necessary to achieve recycling rates. These costs include costs related to both curbside and non-curbside collection programs and may be varied based on population density, distance to a viable responsible end market, and other relevant factors."*

Comment 8d: Additionally, we would recommend including details such as clarifying that the costs may be both direct and indirect costs, as both cost types will be needed to run SB 54 programs. Adding this clarity now will help the system run in a more equitable way that limits disputes and unnecessary burden for all parties.

Payment Mechanism. To ensure that the plan is correctly funded and implemented, as CalRecycle is statutorily required to ensure, further clarification around payment mechanisms for local jurisdictions and service providers is necessary. We recommend the following additional details be added or clarified in the regulations, as further demonstrated in the example language in subsection 4 below:

Comment 8e: We recommend providing more than one payment mechanism option for jurisdictions. Considering the number and unique nature of jurisdictions across the state, a one-size-fits-all approach is not likely to be effective in meeting the goals of SB 54. We recommend that the PRO be required to provide two options in its plan: one that is based on direct costs submitted for payment and a second that calculates the amount based on a per ton payment for actual recovered covered materials. While some jurisdictions may have the capacity to track actual costs to be submitted for payment; others may be unable to take on this administrative burden and will need to use a material-based calculation approach instead. While the calculation-based approach risks less precise and lower reimbursement payment compared to the direct cost method, it is a necessary trade-off to present within the reality of low administrative capacity that many jurisdictions face. To the extent that the PRO does not offer alternatives, it will be even more important to explicitly specify that both direct and indirect costs are reimbursable to cover these increased administrative costs, as recommended in comment 1.B above and the example language below.

Comment 8f: We recommend that CalRecycle require the PRO to consult with local jurisdictions and RSPs in development of the mechanism and schedule. Additionally, the process should include a mechanism for mutual agreement of costs with the impacted local jurisdictions and RSPs.

Comment 8g: We recommend that CalRecycle require the PRO to include in its plan a proposed process for how the PRO will allocate funding to each jurisdiction for facilities, infrastructure, or other programs that service multiple jurisdictions.

Comment 8h: We recommend that the PRO be required to include a specific schedule and process for ensuring payments are made in a timely manner. Section 18980.8(g)(4) states that decisions and reimbursements must be made within a "*reasonable period*." It is unclear what constitutes a "reasonable period," and local jurisdictions in particular need clear expectations and timelines due to their required administrative processes.

(h)(4)(A): We are unaware of any other California regulation or regulatory precedent that specifies this single private dispute resolution company provider.

Comment 8i: We suggest deleting this reference to ensure other well-respected, California-based dispute resolution providers that exist or will enter the market with neutrals that have waste and recycling industry experience will be considered and we encourage healthy market competition, therefore, we recommend the following changes

to (h)(4)(A): *"Unless all entities involved in the dispute agree otherwise, the mediation and arbitration shall be administered by JAMS (formerly known as Judicial Arbitration and Mediation Services, Inc.). (B) Arbitration, if any, shall be conducted under the American Arbitration Association "Commercial Arbitration and Mediation Rules" then currently in effect, which are hereby incorporated by reference, unless the parties agree to other rules and procedures. Notwithstanding the foregoing, the arbitration must comply with Code of Civil Procedure sections 1280 through 1294.4."*

(h)(4)(D):

Comment 8k: Ensuring the system is fair is important and that the haulers and local governments currently running the system have adequate leverage to negotiate fair agreements with the PRO, therefore, we recommend that mediation or arbitration used to resolve disagreements between the PRO and other parties should have the ability to appeal and therefore we recommend the following changes to (h)(4)(D): *"The decision of the arbitrator or arbitration panel shall be non-binding. However, if after 45 days of the decision, no party files a judicial action in a court of competent jurisdiction to resolve the dispute, the award will become final and enforceable."*

Article 11: Requirements, Exemptions, and Extensions for Local Jurisdictions and Recycling Service Providers

Section 18980.11 Date cities need to collect recyclable/compostable materials: New regulation language states that jurisdictions will need to collect all covered materials by the date the PRO plan is approved by CalRecycle. This does now allow the PRO plan to be put in place to provide the systems, collection programs, markets, and reimbursements to jurisdictions to make the collection programs possible.

Comment 11a: We recommend providing jurisdictions with at least 1-2 years notice before they are required to accept all the materials on the covered materials list.

Collection Requirements. We appreciate CalRecycle adding clarifying language in Section 18980.11 regarding the date by which jurisdictions are required to collect materials on the CMC list and the timeline for compliance in response to future CMC updates. However, the timeline for when jurisdictions must begin collecting materials under the program does not acknowledge that jurisdictions will need, and are entitled to under SB 54, funding to implement such changes.

Comment 11b: We recommend retaining the selected timeframes but add language specifying that jurisdictions shall not be subject to enforcement prior to being provided the funding required to implement their programs, which the PRO is required to provide under SB 54.

Comment 11c: Additionally, we would recommend rewording the language CalRecycle added to subdivision (b) to better reflect how material flows from jurisdictions to the intermediate supply chain entity, then to end markets. As written, it could be interpreted that the jurisdiction has direct interface and control

over the responsible end markets. **To address this and the concerns above, we recommend revising the language as follows:**

"(a) No later than the date the Department first approves a PRO's plan, local jurisdictions and recycling service providers shall satisfy the requirement of subdivision (a) of section 42060.5 of the Public Resources Code that their collection and recycling programs include all covered materials within the covered material categories included in the CMC list pursuant to subdivisions (c) and (d) of section 42061 of the Public Resources Code, except as otherwise provided for in subdivision (c) of section 18980.11.

(b) Covered material is considered included in a local jurisdiction or recycling service provider's collection and recycling program if the local jurisdiction or recycling service provider collects the covered material and directs it to recycling at responsible end markets by transferring it to intermediate supply chain entities for subsequent transport to responsible end markets.

(c) As provided in subdivision (g) of section 18980.2.5, a change to the CMC list pursuant to subdivision (e) of 42061 of the Public Resources Code that imposes additional obligations on local jurisdictions or recycling service providers does not affect the obligations of local jurisdictions or recycling service providers under subdivision (a) of section 42060.5 of the Public Resources Code until one year after the change. If a local jurisdiction or recycling service provider submits a request to the Department for an extension or exemption pursuant to subdivision (b) of section 42060.5 of the Public Resources Code before the end of that one-year period, the requirement of subdivision (a) of section 42060.5 of the Public Resources Code shall not take effect until the Department decides whether to grant or deny the request. If a local jurisdiction or recycling service provider has not received adequate funding pursuant to section 42060(a)(1) and 42051.1 of the Public Resources Code in order to implement the requirements of subdivision (a) of section 42060.5 of the Public Resources Code, then such requirements shall not take effect until the local jurisdiction has received such funding."

Section 18980.11.1 Extensions or Exemptions for Local Jurisdictions and Recycling Service Providers (RSP): This entire section is too onerous on local jurisdictions, especially those in marginalized and/or disadvantaged communities, and those with limited resources.

Comment 11c: PRO should make it as easy as possible and provide support for jurisdictions to apply for exemptions, and/or identify the necessity of exemption on jurisdiction behalf and apply on their behalf.

Comment 11d: CalRecycle added new language in Section 18980.11.1(c)(2) that describes the requirements specific to an RSP applying for an exemption and its communication with local jurisdictions. This language does not allow sufficient involvement or approval from the local jurisdiction. **We recommend revising the language as follows:**

"(2) If the applicant is a recycling service provider, it must notify each local jurisdiction to which it provides services that would be affected by the extension or exemption of its intent to request the exemption and receive approval from the local jurisdictions prior to submitting its application. The applicant shall obtain the following information and include it in the application:
(A) Contact information (name, phone number, and email address) for an individual representing the local jurisdiction. The individual identified must be authorized by the jurisdiction to receive all communications regarding the request.
(B) A description of each local jurisdiction's involvement in the application process, including, at minimum, when the applicant notified the local jurisdiction of the intent to submit the application and when the request was approved by the local jurisdiction."

Section 18980.11.1(c)(4): Conditions of Exemption. CalRecycle added new language including further describing what details are to be included in an exemption request.

Comment 11e: For consistency with the language used in Section 18980.11.1(f) and (g), we recommend the language be revised as follows:
"(4) A description, with supporting documentation, of the specific local conditions, circumstances, and challenges that make it impracticable impractical for the local jurisdiction or recycling service provider to include the specified covered material or covered material categories in their collection and recycling programs. The description must demonstrate that the identified material cannot practically be included in the collection and recycling programs. The description must also address, at a minimum, the necessity of the exemption with respect to the following considerations: program efficacy; technological or economic limitations; legal restrictions or requirements; effects on the environment, environmental justice, worker health and safety; public health; hazardous waste generation; cost impacts to local jurisdictions and ratepayers; and transportation safety."

Article 13: Enforcement Oversight by the Department and Administrative Civil Penalties

Section 18980.13 - Compliance Evaluation and Determination: PRC Section 42040(a) makes it clear that the intent of the law is to shift the burden of costs of recycling single-use packaging and food service ware to producers, and that if recycling those materials is cost-prohibitive, some packaging will need to be eliminated or redesigned. With the intent to place this burden on the producers and providing all the power to approve reimbursement of costs to jurisdictions on producers, enforcement of up to $50,000 per day on jurisdictions is not in line with the intent of the law.

Comment 13a: We recommend either eliminating the enforcement of jurisdictions or significantly reducing the daily maximum fines which were intended only for producers.

Section 18980.13.1 - Corrective Action Plan: The regulations provide an opportunity for producers to request a corrective action plan (CAP) in response to violations of Section 42081 of the PRC; however, a similar corrective action plan process is not explicitly available for local jurisdictions or recycling service providers.

Comment 13b: We recommend that CalRecycle add a CAP process for local jurisdictions and recycling service providers to come into compliance prior to considering penalties.

Section 18980.13.2 - Administrative Civil Penalties: (a) states that *"Any entity, such as, a PRO, producer, local jurisdiction, recycling service provider, retailer, or wholesaler, not in compliance with the Act or this chapter is subject to penalties pursuant to subdivision (a) of section 42081 of the Public Resources Code."* Section 42081(a) of the Public Resources Code allows for penalties of up to $50,000 per day per violation on any entity.

Comment 13c: We recommend that CalRecycle add language specifying that CalRecycle shall consider in its penalty determination whether the jurisdiction or its designees have received adequate support and funding by the PRO to accomplish the requirements of the Chapter and shall provide local jurisdictions the opportunity to provide information demonstrating as such. Additionally, we recommend that CalRecycle include clarifying language that in CalRecycle's determination of penalties, CalRecycle will only consider assessing lower penalties for public entities or include specific and lower penalty ranges for jurisdictions which would be in the range of $1,000 a day only after they have been given the opportunity to address a CAP as the producers have available to them. We recommend that CalRecycle consider a penalty structure that is more equitable and more aligned with the goals of SB 54. The penalty amount of $50,000 per day would not have the same impact on multinational companies as it would for local jurisdictions, the latter being excessively burdened with the high cost. This approach does not align with the intent of SB 54 to shift the burden of costs from jurisdictions to producers.

Section 18980.13.5. Disciplinary Actions: We are concerned that section (a) requires that someone must request a hearing if the Department finds that a PRO or Independent Producer has failed to meet a requirement of the chapter which can result in revocation of a PRO or previously approved Plan. We believe to act with such consequence, there should automatically be publicly notice and hearing, so the public understands that enforcement action is being considered.

Comment 13d: We recommend this language change. We want transparency in the enforcement process, which is even more important with a department like CalRecycle, rather than a board. "*If, after notice and hearing, ~~if one is requested,~~ the department finds that a PRO or independent Producer has failed to meet a requirement of this article or this chapter, the Department may, in addition to imposing any civil penalties or taking any other action authorized under the Act, take one or more of the following actions, as it deems necessary to effectuate the purposes of the Act"*

Article 14:

Comment 14: We recommend that the language in Article 14 as previously written remain in the regulations. We have concerns that without that language, CalRecycle could be challenged on the ability to add PROs over time or to appoint a new PRO because it has been revoked.

Thank you again for the opportunity to comment.

Sincerely,

Jordan Wells, Director of Advocacy and Communications
National Stewardship Action Council

Tim Dewey-Mattia, Recycling & Public Education Manager
Napa Recycling & Waste Services

Coby Skye, President
Blue Skye Environmental Consulting

Robert Daviduk, Co-Founder & Board Member
rPlanet Earth

Emin Israfil, Founder,Rubbish

Shikha Gupta, Solid Waste Programs Division Manager
City of Sunnyvale

Kevin Miller, Materials Diversion Administrator (Recycling Manager)
City of Napa

Hilary Near, Commercial Zero Waste Senior Coordinator
City & County of San Francisco

Peter Holtzclaw, Executive Director
West Contra Costa Integrated Waste Management Authority (RecycleMore)

Erin Levine, Resource Recovery Manager
World Centric

Adrian Colesberry, Founder, Buoy, LLC

Anthony Luna, Consultant
Anthony Luna LLC, working with Atrium 916

Sydney Harris, Policy Director, Upstream