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Submitted Electronically via wastechar@calrecycle.ca.gov

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Re: Initial Questions - California Senate Bill 343 Preliminary Findings Report

To Whom it May Concern:

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