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June 21, 2019

The Honorable Laura Friedman, Chair  
Assembly Committee on Natural Resources  
Legislative Office Building  
1020 N Street, Room 164  
Sacramento, CA 95814

Dear Assembly Member Friedman:

**SUPPORT IF AMENDED/OPPOSE UNLESS AMENDED – SENATE BILL 54 (ALLEN, SKINNER, STERN, AND WIENER) AS AMENDED ON MAY 22, 2019 – CALIFORNIA CIRCULAR ECONOMY AND PLASTIC POLLUTION REDUCTION ACT**

The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force) **Support if Amended/Oppose Unless Amended** Senate Bill 54 (SB 54), as amended on May 22, 2019, if further amended to address the following comments, concern, and recommendations in this letter.

If enacted, SB 54, as written, would:

1. Enact the California Circular Economy and Plastic Pollution Reduction Act (Act), which would establish the policy goal of the state that, by 2030, manufacturers and retailers achieve a 75 percent reduction of the waste generated from single-use packaging and products offered for sale or sold in the state through source reduction, recycling, or composting (emphasis added).
2. Require the Department of Resources Recycling and Recovery (CalRecycle), before January 1, 2023, in concert with stakeholders, to adopt regulations that require manufacturers and retailers to:
  - Source reduce, to the maximum extent feasible, single-use packaging and priority single-use plastic products (emphasis added), and
  - Ensure that all single-use packaging and priority single-use plastic products in the California market are recyclable or compostable (emphasis added).

3. Require a manufacturer of single-use plastic packaging or priority single-use plastic products to demonstrate the following recycling rates as a condition of sale in California, and would also authorize CalRecycle to impose a higher recycling rate (emphasis added):
  - not less than 20 percent on and after January 1, 2024,
  - not less than 40 percent on and after January 1, 2028, and
  - not less than 75 percent on and after January 1, 2030.
4. Defines "priority single-use plastic products" to mean the 10 single-use plastic products that are the most littered in California, as determined by CalRecycle based on litter survey conducted in California between 2017 and 2020.
5. Require CalRecycle, before adopting the regulations, to develop a scoping plan with extensive outreach to stakeholders to inform the development of the regulations. As part of the scoping plan, CalRecycle shall evaluate the feasibility of employing the following regulatory measures (emphasis added):
  - a. Developing incentives and policies;
  - b. Economic mechanisms to reduce;
  - c. Discouraging litter, export, or improper disposal;
  - d. Requiring individuals or entities to notify CalRecycle prior to exporting to non-members of the Organization for Economic Cooperation and Development;
  - e. Establishing labeling requirements regarding recyclability or compostability;
  - f. Adopting model best practices;
  - g. Developing alternative compliance mechanisms;
  - h. Adopting actions identified through the California Ocean Litter Prevention Strategy and the Statewide Microplastics Strategy;
  - i. Establishing an Extended Producer Responsibility (EPR) program to require manufacturers and retailers to contribute to the costs;
  - j. Establishing criteria for the source reduction requirements; and
  - k. Establishing minimum postconsumer recycled content requirements for single-use packaging and products.
6. Require CalRecycle to develop criteria to determine which types of single-use packaging or priority single-use plastic products are reusable, recyclable, or compostable.
7. Require local governments, solid waste facilities, recycling facilities, and composting facilities to provide information requested by CalRecycle for purposes of developing that criteria.

The Task Force is supportive of the State's efforts to reduce, reuse, recycle, and compost waste. We also would like to commend the authors' intent to promulgate the California Circular Economy and Plastic Pollution Reduction Act with a goal to reduce single-use packaging and priority single-use plastic products legislation via policies that are economically and environmentally responsible. With that goal in mind, the Task Force has reviewed the proposed legislation and offers the following comments and suggestions to insure the success of the proposal and achievement of its goals:

## **1. Scope of the Proposal**

It appears that the intent of the proposed legislation is to address management of "single-use packaging" and "priority single-use plastic products" (emphasis added). As such the reference to "single-use packaging and products" as used in Section 42042 is misleading and needs to be revised to be consistent with terminologies used in Sections 42042, 42043, 42044, and 42045. In order to avoid any confusion and ensure the success of the proposal, the Task Force strongly recommends that all references to the term "single-use packaging and products" be revised throughout the proposed legislation with the term "single-use packaging and priority single-use plastic products", specifically in Sections 42042, 42043, 42044 and 42045 of the proposed legislation (emphasis added).

## **2. Circular Economy and Extended Producer Responsibility (EPR)**

We are told that it is not the authors' intent to place additional responsibility on local governments and haulers. We very much appreciate this intention. It is our understanding that the intent is to focus on an Extended Producer Responsibility (EPR) approach on manufacturers and producers of the packaging and priority single-use plastic products requiring them to implement and fund re-design of their packaging and products as well as to fully fund processing costs for when they do not meet recycling or composting requirements (emphasis added). However, that intention is not provided in the bill language as evidenced by the section quoted below to merely evaluate the feasibility on an EPR approach.

Section 42043.(b)(3) (l) – CalRecycle shall evaluate the feasibility of employing regulatory measures "*Establishing an extended producer responsibility program to require manufacturers and retailers to contribute to the costs associated with processing the single-use packaging and products they produce*" (emphasis added).

The title of the proposed legislation includes the phrase "Circular Economy." Circular Economy is not defined in the proposed Bill nor does it currently exist in California law. The phrase "Circular Economy" ought to be defined. A cornerstone of

Circular Economics is Extended Producer Responsibility which is almost absent from the Bill except in Section 42043 (b)(3)(I) where its feasibility is to be evaluated for “manufacturers and retailers to contribute to the costs associated with processing the single-use packaging and products they produce.”

EPRs are legislation, legal frameworks codified within the law for which regulations are developed. The global best practice and most effective packaging EPRs require producers to be 100 percent responsible for the finances and implementation of their product stewardship program such as the one formulated by the California’s SB 212 (Chapter 1004 of 2018 state statute – Pharmaceutical & Sharps Waste Stewardship Program). We believe that the proposed legislation should place EPR and enforcement of its provisions at the center of its legal structure with possible ban on all of plastic resins #6 and #7 to give local jurisdictions and haulers immediate relief while regulations for specific recycled content standards, market development, incentives and producers’ environmental restoration costs being prepared and reported to legislature on specific topics for development and implementation of new/expanded policies. Additionally, the recommended EPRs need to include provision requiring producers pay an administrative fee to the state to cover the costs of developing the regulations and implementation which is currently and sorely absent from the Bill.

While the Bill includes for CalRecycle to “evaluate the feasibility of employing” certain measures, CalRecycle is provided with the authority to disregard one and all recommendations. Additionally, there is no mandate that guarantees that these measures will be employed to squarely place the circular economics and extended producer responsibilities on producers, and the regulatory and enforcement responsibilities on CalRecycle.

### **3. Mandate State Policy on Producers, and not on Local Jurisdictions – Market & Infrastructures**

While the Task Force is fully in support of reduction of waste generated by single-use packaging and priority single-use plastic products, based on our experience with AB 341 (2011) and AB 1826 (2014), and China National Sword policy, the proposed legislation needs to include provisions to make the proposal economically sustainable while providing necessary tools to provide for the needed infrastructures. Development of market and needed infrastructure is ensured by legislative measures, without which there is no responsibility and accountability (emphasis added).

In addition, the State is in the process of implementing the ambitious organic waste recycling goals contained in SB 1383 (2016) which requires Californians to reduce landfill disposal of organic waste by 50 percent below 2014 level by 2020 and 75 percent below 2014 by 2025. CalRecycle’s far-reaching SB 1383 regulation could cost in excess of

\$20 billion to implement while posing many challenges for local governments and the waste industry. To further compound the issue, the CalRecycle developed and implemented regulations for AB 341 and AB 1826 as well as the soon to be promulgated SB 1383 regulations, which have placed the majority of the implementation and enforcement responsibility on local governments. This is an extremely heavy burden on local governments and waste haulers that we will struggle to bear.

Section 42042.(a) It is the policy goal of the State of California that, by 2030, manufacturers and retailers of single-use packaging and products achieve a 75-percent reduction of the waste generated from single-use packaging and products offered for sale or sold in the state through source reduction, recycling, or composting.

We are concerned with the said provision in that local jurisdictions may be forced by CalRecycle to do the State's job similar to AB 341 and AB 1826. The proposed legislation needs to include provisions which would prohibit CalRecycle to impose unjustifiable regulations and/or requirements on local governments and the waste management industry that are outside of local jurisdiction's authority and capacity (emphasis added).

Section 42043.(b)(3) As part of the scoping plan, the department shall evaluate the feasibility of employing the following regulatory measures:  
(A) Developing incentives and policies to maximize and encourage in-state manufacturing using recycled material generated in California.  
(B) Developing economic mechanisms to reduce the distribution of single-use packaging and priority single-use plastic products [emphasis added].

This section does not ensure that there will be incentives and legislative policies adequate to meet the implementation of in-state manufacturing using recycled material and reduce the distribution of the intended packaging and products. The provisions that will make this proposal economically sustainable and provide the tools necessary for the needed infrastructure need to be defined and legislative tools be provided. Without this, local jurisdictions could be sorely pressed as they are with AB 939, AB 341, AB 1826, SB 1383, etc.

Section 42043.(b)(3)(C) Discouraging, to the extent feasible, the litter, export, or improper disposal of single-use packaging, products, and other materials likely to harm the environment or public health in California or elsewhere in the world [emphasis added].

The State may determine its capacity to deal with this expansive responsibility; local jurisdictions would be hard pressed to take on this responsibility for elsewhere in the world.

Section 42044.(d)(2) Local governments, solid waste facilities, recycling facilities, and composting facilities shall provide information requested by the department pursuant to paragraph (1) to the department [emphasis added].

This requirement is too restrictive and legally a local government may not be able to comply. Therefore, we suggest revising the statement to read “provide information to the extent feasible” and allow local jurisdictions to determine what is “feasible”. Local governments may or may not know what is in their waste stream. Some local governments have few or one staff member that wears multiple hats and have multiple responsibilities and may not have the capacity to provide the requested information. This could be similar in difficulty to pulling information for SB 1383.

Therefore, the Task Force strongly recommends that the proposed legislation explicitly incorporate mechanisms to limit CalRecycle from passing its responsibilities to local governments and waste haulers for implementation. Additionally, the legislation ought to incorporate provisions for local governments to be reimbursed by CalRecycle if such cases occur.

#### **4. Determining Compostability**

Section 42044.(c) For purposes of determining if single-use packaging or priority single-use plastic products are compostable, the director shall consider, at a minimum, all of the following criteria [emphasis added].

In addition, the proposed legislation ought to further address the question of what is compostable. What is compostable is a challenging matter due to composting facilities not willing or able to take certain “compostable” products and increasing composting operating costs. This determination ought not to be left to CalRecycle alone but CalRecycle ought to be directed to utilize subject matter experts and stakeholders, specifically including composting operators and local jurisdictions.

#### **5. Enforcement**

42042.(b)(2) Ensure all single-use packaging and products that are offered for sale or sold in California are recyclable or compostable, as determined by the department pursuant to Section 42044 [emphasis added].

It is unclear who will enforce the requirements of the Act since the Bill fails to address the issue. It is likely that CalRecycle will be the lead may transfer the enforcement to local governments. Since it is more efficient to regulate packaging/products on all producers before products are distributed throughout the state the Bill ought to clearly state that CalRecycle is not to pass the enforcement to local government. It will be incredibly burdensome for local governments to attempt to regulate all the retailers individually in each jurisdiction. Should the enforcement be transferred to local governments, then jurisdiction must be reimbursed for their cost.

## **6. Definitions**

Throughout the proposed legislation, terminologies such as “Business”, “Entity”, “Manufacturers and Retailers”, “Regrettable”, “Compostable”, “Negative Externalities”, etc., have been used. To avoid potential confusion and misunderstanding, these terminologies need to be clearly defined.

## **7. Exemption**

To provide a greater clarity on the scope of the packaging and products subject to the requirements of the proposed legislation, the Task Force recommends that the proposed Section 42044 (a) of the Bill be expanded to also exempt products used for sanitary purposes that are intended to facilitate disposal, such as garbage bags, diapers, etc., and those for which specific packaging types are required because of product characteristics.

Pursuant to Chapter 3.67 of the Los Angeles County Code and the California Integrated Waste Management Act of 1989 (Assembly Bill 939), the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and the 88 cities in Los Angeles County with a combined population in excess of ten million. Consistent with these responsibilities and to ensure a coordinated and cost-effective and environmentally sound solid waste management system in Los Angeles County, the Task Force also addresses issues impacting the system on a countywide basis. The Task Force membership includes representatives of the League of California Cities-Los Angeles County Division, County of Los Angeles Board of Supervisors, City of Los Angeles, waste management industry, environmental groups, the public, and a number of other governmental agencies.

The Honorable Laura Friedman, Chair  
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Based on the foregoing, the Task Force position on SB 54 is to **“Support if Amended/Oppose Unless Amended”**. If you have any questions, please contact Mr. Mike Mohajer, a member of the Task Force, at [MikeMohajer@yahoo.com](mailto:MikeMohajer@yahoo.com) or at (909) 592-1147.

Sincerely,



Margaret Clark, Vice-Chair  
Los Angeles County Solid Waste Management Committee/  
Integrated Waste Management Task Force and  
Mayor, City of Rosemead

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cc: Senator Allen  
Senator Skinner  
Senator Stern  
Senator Wiener  
Senator Wieckowski  
Assembly Member Friedman  
Assembly Member Gonzalez  
Assembly Member Kamlager-Dove  
Assembly Member McCarty  
Each Member and staff of the Assembly Committee on Natural Resources  
California State Association of Counties  
League of California Cities – Los Angeles County Division  
Each Member of the Los Angeles County Board of Supervisors  
Sachi A. Hamai, Los Angeles County Chief Executive Officer  
San Gabriel Valley Council of Governments  
South Bay Cities Council of Governments  
Gateway Cities Council of Governments  
Westside Cities Council of Governments  
Each City Mayor and City Manager in the County of Los Angeles  
Each City Recycling Coordinator in Los Angeles County  
Each Member of the Los Angeles County Solid Waste Management  
Committee/Integrated Waste Management Task Force