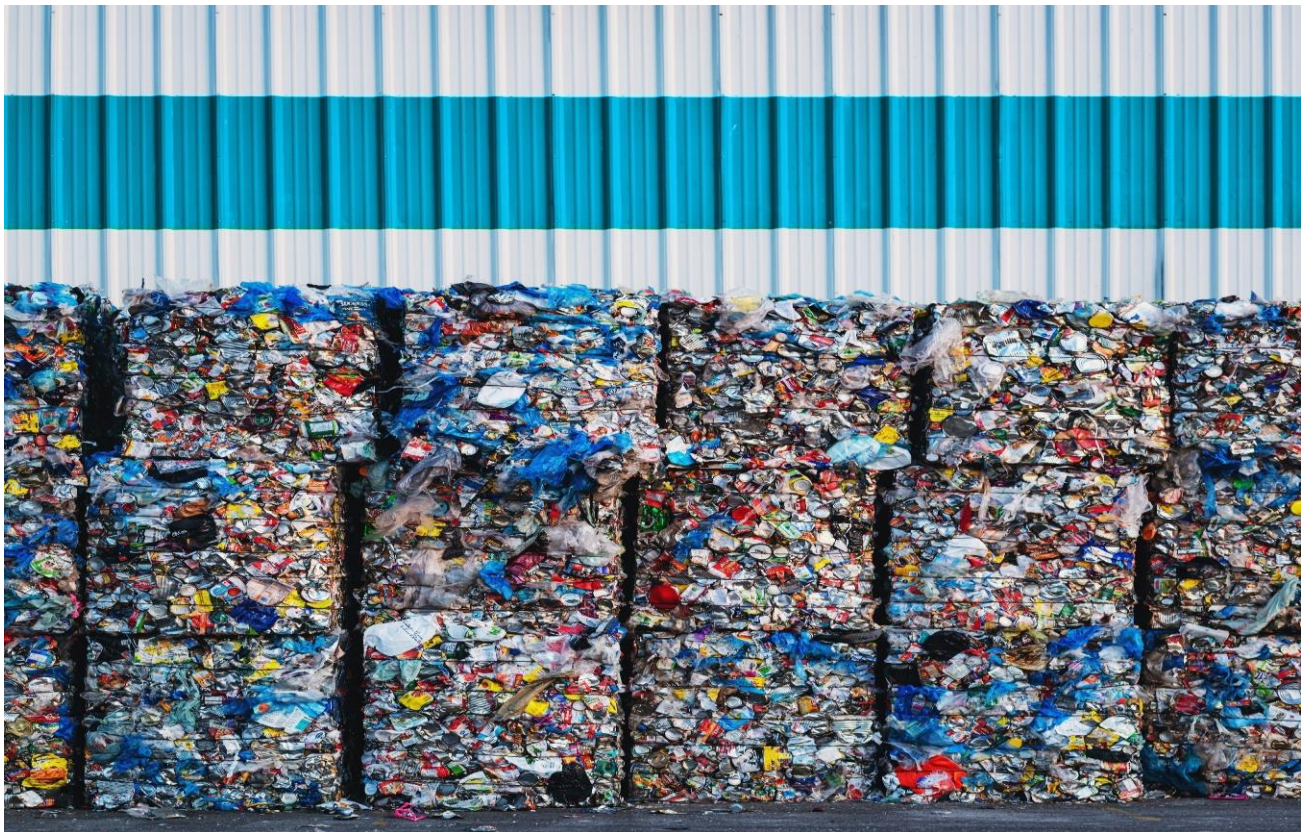


All Wrapped Up

Extended Producer Responsibility for Packaging

October 2024 Newsletter

In this month's edition of *All Wrapped Up*, we discuss CalRecycle's decision not to incorporate certain comments from CAA and the SB54 Advisory Board in its EPR regulation; a kerfuffle in Colorado over how to approach material category lists; and a definition of packaging material in Maine that could encompass a host of everyday consumer products. We also take a deeper dive – in the *Issue in Focus* section – into how CAA intends to “require” all producers to execute the same “agreement.”



October 2024 State-By-State Updates

California

- The California Department of Resources Recycling and Recovery (“CalRecycle”) released revised proposed regulations on October 14, 2024, for a 15-day public comment period, then extended the period to November 4, 2024.¹ Notable changes include:
- revised definitions of components (detachable and non-detachable), distribution, producer, product, reuse and refill, and single-use;
 - revisions to the exclusions for reusable and refillable packaging and long-term protection or storage of a product;
 - the establishment of a July 1, 2025 producer registration date, despite the fact that CAA and the SB54 Advisory Board both requested April 1, 2025 in public comments; and
 - clarification that only the PRO and independent producers may request exemptions based on “unique challenges” in complying with the law, or “health and safety reasons, or because [the material] is unsafe to recycle” pursuant to CAL. PUB. RES. CODE § 42060(a)(3-4).

The revised regulatory text also ostensibly provides a limited allowance for advanced chemical recycling through technologies that employ “chemical, rather than mechanical or physical, processes to alter the chemical structure of plastic to create new raw material for use,” provided that an independent, peer-reviewed study confirms that the technology does not generate a “significant amount of hazardous waste.” “[S]ignificant amount,” however, is thereafter defined as a “greater amount” than what is generated by traditional mechanical recycling, which makes little sense given that traditional mechanical recycling typically does not generate any hazardous waste at all.

One of the more notable “non-changes” was CalRecycle’s adherence to the 2023 calendar year as the baseline for source reduction targets. Both CAA and the Board commented:

Because producers would not have had the appropriate systems in place to capture the weight and number of plastic components they supplied to the California market in the 2023 calendar year, CAA recommends giving producers the flexibility to either report their 2023 calendar year data or 2025 calendar year data as a proxy for the 2023 baseline year.

CalRecycle may have been limited in its ability to incorporate these comments given the express language of CAL. PUB. RES. CODE § 42057(b), which sets 2023 as the baseline. That noted, CAA may be taking the position that it will nevertheless have the discretion to interpret both the statute and the regulation to allow for the use of 2025 calendar year data as a proxy for 2023.

Final regulations must be adopted by January 1, 2025, which is the statutory deadline set forth in CAL. PUB. RES. CODE § 42060(a).

¹ CalRecycle, Proposed Regulatory Text for SB54: Plastic Pollution Prevention and Packaging Producer Responsibility Act (Oct. 14, 2024), <https://www2.calrecycle.ca.gov/Docs/Web/129138>.

- The SB54 Advisory Board was originally scheduled to host a second round of discussions on October 25, 2025, on “barriers and solutions to a circular economy” by revisiting the “compostability” topic in keeping with the directive in CAL. PUB. RES. CODE § 42070(e)(1).² The board, however, postponed this discussion and instead asked CalRecycle to summarize whether and to what extent the revised regulatory text incorporated its comments. The balance of the meeting was dedicated to a general discussion between board members of potential comments to be submitted to CalRecycle during the final comment period. Notable topics included:
- (1) how the plastic pollution mitigation fund will be allocated;
 - (2) why the enforcement provisions are limited to “participating” producers as opposed to including free riders;
 - (3) the revised advanced chemical recycling provision; and
 - (4) the use of 2025 calendar year data as a proxy for the 2023 baseline year in connection with source reduction targets.

Colorado

Illinois (needs assessment only)

Maine

Maryland (needs assessment only)

Minnesota

Oregon

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Circular Action Alliance

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Issue In Focus: The PPA and Subsidiary Data Aggregation

² See the July 2024 edition of *All Wrapped Up* for a recap of the initial discussion of this topic.

King & Spalding + Extended Producer Responsibility

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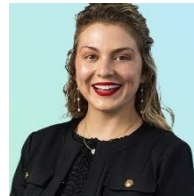
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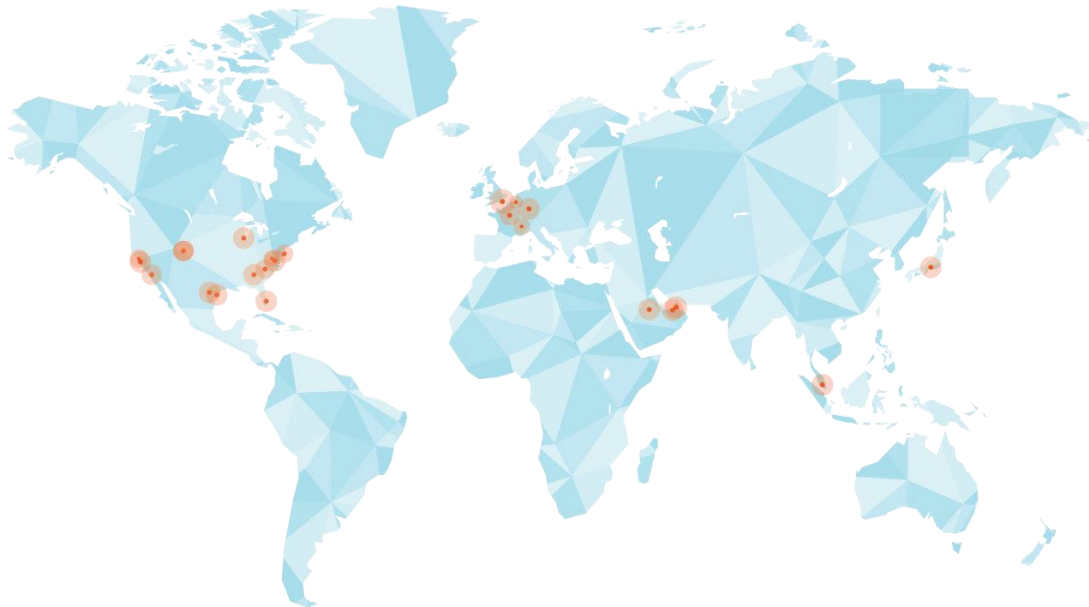
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