

California Passed a Landmark Law About Plastic Pollution. Why Are Some Environmentalists Still Concerned?

insideclimatenews.org/news/12102022/california-plastics-pollution-bill

By James Bruggers

October 12, 2022



California has a new environmental law that's described as either a major milestone on the road to tackling the scourge of plastic pollution—or a future failure with a loophole big enough to accommodate a fleet of garbage trucks.

The law, which seeks to make the producers and sellers of plastic packaging responsible for their waste, divided California's sizable environmental community during its development over the last few years. Key environmental organizations eventually came around to supporting it. But more than three months after Gov. Gavin Newsom signed what's known as SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act is still stirring controversy.

After tense negotiations under pressure from a looming, high-stakes deadline, a compromise last summer won the day—and political leaders were able to claim a big environmental victory in the battle to take a bite out of the global plastics crisis.

Among its provisions, the law requires certain types of packaging in the state to be recyclable or compostable by 2032. It cuts plastic packaging by 25 percent in 10 years and requires 65 percent of all single-use plastic packaging to be recycled in the same timeframe.

Keep Environmental Journalism Alive

ICN provides award-winning climate coverage free of charge and advertising. We rely on donations from readers like you to keep going.

Donate Now

The law's supporters say that could go a long way toward corralling pollution from plastic packaging in the country's largest state, with a population of 39 million. They hope it will spur other states to begin to hold the plastics industry accountable for waste that's choking oceans and getting inside human bodies.

"We are very proud of the work we got done," said state Sen. Ben Allen, SB 54's main sponsor, in a recent webinar hosted by the National Stewardship Action Council, a Sacramento-based organization that was involved in the negotiations over the final language of the law. "I am very pleased with what this is going to mean for California, our environment, and also our local governments and their budgets."

However, there are also lingering concerns in some environmental camps that the law gives the industry too much control over itself and that less-than-specific wording in one section could allow for the controversial practice of chemical recycling of plastics, which environmentalists don't consider to be recycling.

Another part of the law is worded broadly enough to possibly exempt a wide array of plastic products from having to comply with a primary thrust of the law, which is to shift plastic pollution responsibilities from consumers to companies that make and use plastic packaging, said Judith Enck, founder and president of Beyond Plastics, which works to reduce plastics waste in the environment.

The language at issue would allow California's Department of Resources Recycling and Recovery, known as CalRecycle, to exempt materials that present "unique challenges" in complying with the extended producer responsibility provisions of the law.

The wording could invite legal challenges to exempt polystyrene, which is used to make cups, lids and plasticware, bread or frozen



food bags made from low-density polyethylene, or other kinds of containers, Enck said. Other experts said there are concerns that makers of toothpaste will seek to exempt toothpaste tubes.

The result could be a lot of lawsuits from companies seeking the exemptions, said Enck, a former regional administrator of the U.S. Environmental Protection Agency. “Many, many companies will apply for that loophole. If they don’t get the loophole, the state will be sued. The attorney general will have to represent the state. It’s just a recipe for disaster.”

Other environmental advocates are less concerned about potential loopholes but agree with the need to closely watch CalRecycle officials as they draft regulations for the new law, and then hold the agency accountable for its enforcement.

“Judith is right in that we should watch the regulations’ development with an eagle eye,” said Heidi Sanborn, founder and executive director of the National Stewardship Action Council. “The industries are going to fight like heck to get what they want. We have to fight like heck to get what we want. That is normal.”

But overall, Sanborn said, SB 54 “is the biggest deal ever passed in the United States to address source reduction, recycling and remediation of plastic pollution.”

When the bill was signed by Newsom on June 30, Julie Packard, Monterey Bay Aquarium executive director, fully embraced the measure. “California has always been a leader in protecting our environment and health,” Packard said. “Now we are setting the precedent for reducing single-use plastic, which harms ocean wildlife and pollutes our communities.”

Anja Brandon, U.S. Plastics Policy Analyst at Ocean Conservancy, who worked on the bill, added: “We can’t solve this problem without U.S. leadership, and by passing this law, California is righting the ship.”

Shifting the Onus From Consumers to Industry

California already has a three-decade-old law that sets a state recycling goal of diverting 75 percent of solid waste from landfill disposal through source reduction, recycling and composting. It has a bottle bill that requires the payment of a redemption value, or deposit, on many kinds of beverages packaged in aluminum, glass or plastic. The state has banned most single-use plastic carryout bags at stores, has restrictions on single-use plastic straws and will require plastic beverage containers to be made of at least 50 percent recycled content by 2030.

But globally, some 11 million metric tons of plastic waste flow annually into oceans, an amount that may triple in less than two decades, according to a 2020 report from the Pew Charitable Trusts, a nonprofit public charity with a program aimed at stopping plastic

pollution in the ocean. And with California the fifth-largest economy in the world, environmental advocates say it continues to be a big part of the problem.

“It was really clear to us that one-off solutions like straws on demand, they really weren’t enough,” said Allen. “We needed a larger framework to tackle the crisis.”



California State Sen. Ben Allen on May 18, 2018 in Los Angeles, California. Credit: Greg Doherty/Getty Images

Newsom, a Democrat, said in a press release after signing the bill that SB 54 was the most significant overhaul of California’s plastics and packaging recycling policy in history. “California won’t tolerate plastic waste that’s filling our waterways and making it harder to breathe. We’re holding polluters responsible and cutting plastics at the source,” he said.

Under the law, producers will form what lawmakers call a “producer responsibility organization,” or PRO, by Jan. 1, 2024, which must submit a compliance plan to CalRecycle for review and approval. The plan needs to, among other requirements, spell out how the industry organization will collect fees from its members, cover costs of recycling providers, fund other provisions of the law, meet source reduction targets and incorporate post-consumer recycled content into packaging, according to a California Senate analysis of SB 54.

The law also requires the PRO to send \$500 million each year for 10 years to the state to fund plastic pollution mitigation efforts to monitor and reduce the impacts of plastic pollution on the environment and human health. Sixty percent must be spent to offset the historical and current impacts of plastics on disadvantaged or low-income communities or rural areas.

Though pleased with the law, Allen said he will consider “this whole effort to be a failure if we are not able to scale this model,” by inspiring other states to adopt their versions of extended producer responsibility and to help drive sustainability changes on global packaging markets.

California is the fourth state to pass an extended producer responsibility law for packaging, behind Maine, Oregon and Colorado. Several others are considering such laws.

Going With the Legislative Bird in the Hand

The bill came together slowly in recent years and drove a wedge through the environmental community. Some groups were instead throwing their weight behind a competing extended producer responsibility ballot measure that, if it passed in November, would have given more authority to CalRecycle, had faster compliance deadlines and banned polystyrene packaging. As a late June deadline approached for the initiative’s sponsors to withdraw their measure from the November ballot, lawmakers, who had preferred government by legislative process compared to the wildcard of a ballot initiative that is harder to change in the future, assembled a smaller group of plastics industry, business and environmental interests to find a legislative compromise.

Some major environmental groups were not falling in line.

“As the negotiations over the bill have progressed over the last three years, SB 54 has become increasingly dependent on a manufacturer-run model that would put the producers in charge of running the system,” the Natural Resources Defense Council, Californians Against Waste, and the Sierra Club California wrote to lawmakers on June 19, amid the last-minute negotiations.

In the end, however, compromise ruled the day and key environmental groups that were supporting the initiative agreed to instead support the legislation, so backers of the initiative agreed to pull it from the ballot.

Avi Kar, an NRDC senior attorney and director of the environmental group’s program on healthy food and people, said he still has some reservations about the law.

“We think there are challenges with having extended producer responsibility which gives the industry the responsibility for handling it,” Kar said.

He also shares some of Enck’s concerns about the provision that allows for businesses to request exemptions for plastic packaging that poses “unique challenges” for compliance.

“We raised that as a concern,” Kar said. “It’s not ideal language” and contains “significant ambiguity. A lot will depend on implementation.”

But SB 54 “is a step in the right direction in ensuring plastics are reduced and regulated to the extent possible,” Kar said.

Nick Lapis, director of advocacy for Californians Against Waste, said his organization struggled to weigh the pros and cons of the initiative versus SB 54. “We genuinely didn’t think the bill was going to work,” he said.

He said key concerns about SB 54 were sufficiently addressed to his group’s liking, including around chemical recycling—even though Enck and others still disagree over that.

Newsletters

We deliver climate news to your inbox like nobody else. Every day or once a week, our original stories and digest of the web’s top headlines deliver the full story, for free.

Californians Against Waste made a political calculation. “Do we take this bird in the hand (SB 54) or do we risk it for two in the bush?” he said, referring to going to voters for the initiative. Polling for the initiative looked good, but the industry was “gearing up for a big fight,” Lapis said.

Lapis said he is not as worried as Enck about the “unique challenges” loophole in large part because he said he has trust in CalRecycle.

“I don’t see CalRecycle being too lenient,” he added. “Punting to a regulatory agency is reasonable.”

Wiggling Out of Accountability?

The final negotiations involved the American Chemistry Council, the California Chamber of Commerce and the [Recycling Partnership](#), which is backed by plastic manufacturing and packaging industries, major consumer product brands and retail outlets.

The chemistry council, an industry lobby group pushing hard to promote chemical recycling, called SB 54 “a better outcome than the withdrawn anti-plastics ballot initiative.” The initiative would have been too costly to consumers with limited recycling benefits, the lobby group said.

Dylan de Thomas, who leads the public policy and government affairs team at the Recycling Partnership, applauded the bill’s approach of creating a PRO to do much of the work.

“That is how we give the industry flexibility to comply with a complex law that will affect what is sold on store shelves,” he said at the National Stewardship Action Council webinar.

The state chamber of commerce said large and small businesses will “face a maze” of new environmental regulations but said SB 54 “ensures long term policy certainty around recycling and packaging” and allows “the legislature to make changes to the proposal in the future, if necessary, rather than having to go back to the ballot.”

Among other environmental advocates who remain holdouts to endorsing the new law is Jane Williams, executive director of California Communities Against Toxics, an environmental nonprofit. One of her concerns is that the law does not force enough reduction in plastic production. Another is that the operating requirements of the producer responsibility organization are too loose and could allow the industry to avoid accountability.

“The PRO,” Williams said, “can say ‘We shipped (plastic waste) to Mexico and recycled it,’ but how is the state going to know?”

Sanborn said the law gives state regulators a lot of teeth to make sure the industry’s PRO does what it is supposed to do. It can issue steep fines, order corrective action plans or ultimately “take authority away from the PRO,” she said.

Skepticism of Chemical Recycling Remains

For her part, Enck counted as many as two dozen opposition points, including what she interprets to be no explicit ban against chemical recycling, which many environmental advocates see as a form of dirty recycling with climate impacts.

Less than 6 percent of plastic waste actually gets recycled in the United States, but most of that goes through a mechanical process involving melting and remolding. Chemical recycling can subject plastic waste to intense heat and chemicals in a process that seeks to return the waste to basic plastic building blocks or feedstocks and is seen by the industry as a key solution to the plastics crisis though it is still largely in the research and developmental phase.

The new California law defines recycling in a way that does not include combustion, incineration or most kinds of energy generation.

Kar, the NRDC attorney, said that language should effectively prevent chemical recycling.

He also said it was significant that Allen submitted a letter to a legislative publication declaring his intention was to ban specific forms of chemical recycling known as pyrolysis, gasification and solvolysis.

Enck said the language in Allen’s letter should have been in the legislation and to make sure the industry cannot leverage additional loopholes, it should have specifically named pyrolysis, gasification and solvolysis as banned processes.

“These are not prohibited in SB 54,” Enck said. “That is a big problem. On something this important, there should be no confusion.”

Sierra Club California remained opposed to SB 54 due to its own concerns about how the bill dealt with advanced or chemical recycling, said Brandon Dawson, a chapter’s spokesman. “That said, we will be working at CalRecycle on implementation to address those concerns,” he said.

Those who worked for the bill’s adoption should celebrate, said Sanborn, of the National Stewardship Action Council. But no bill with such a large scope is perfect, she added. Now, she said, everyone needs to “get back to work” and keep the pressure on CalRecycle as it starts to implement the law.

The law will affect “a large number of manufacturers who have a lot of money and a lot of clout. We will have to be on this all the time.”