July 12, 2021

The Honorable Tom Umberg
Chair,
Senate Judiciary Committee
Room 5097
State Capitol
Sacramento, CA 95814

RE: AB 478 (Ting & Irwin) Solid Waste: Thermoform Plastic Containers: Postconsumer Thermoform Recycled Plastic: Commingled Rates

POSITION: Concerned

Dear Chairman Umberg:

The undersigned organizations commend and support the authors' efforts to improve the state's recycling system and increase the amount of PET recycled in California by developing a thermoform plastic mandatory minimum content law. We have supported minimum content legislation in the past and concur with the authors' efforts to create a circular economy for certain packaging types. However, we are concerned that certain provisions in AB 478 (Ting & Irwin) may have negative impacts on the current recycling system by limiting recycling options, putting more pressure on the already-stressed PET collection system and narrowing options in the PET recycling market. Therefore, we respectfully offer the following concerns and look forward to working with the authors to get these concerns resolved.

AB 478 Impacts All Containers Covered Under the Bottle Bill

AB 478 has a fatal flaw in that it will change the definition of "commingled rate" for all types of containers covered under the California Beverage Container Recycling and Litter Reduction Act, not just thermoform plastic containers.

Under current law, "commingled rate" is the ratio of empty beverage containers to all other containers of the same material type. In effect, the commingled rate prohibits recycling centers and processors from paying curbside programs more than the applicable statewide average curbside commingled rate unless the curbside program has received an individual commingled rate from CalRecycle. The "commingled rate" helps ensure that recyclers are only paid the California Redemption Value (CRV) on CRV-eligible containers.

The implications of changing the "commingled rate" definition in the California Beverage Container Recycling and Litter Reduction Act to benefit a PET thermoform container that is not covered by the Act go well beyond the bill's stated purpose of enhancing recycling of thermoform plastics. By revising the calculation of "commingled rate" for all containers covered by the state's bottle bill, they are revising the commingled rate calculation for all CRV-containers. The implications of this change are very troublesome since, as discussed below, the changes are undefined and therefore vague.

AB 478, as amended on June 17, 2021, adds the term "form" to the definition of "commingled rate" in the California Beverage Container Recycling and Litter Reduction Act impacting the commingled rate calculation for aluminum, glass, plastics, and bi-metal beverage containers. This change provides that the "commingled rate" calculation must now include not only the "type" of material but the "form" of a container as well. The term "form" is undefined and in our view this language is problematic.

AB 478 In Effect Mandates That Thermoform PET Be Aggregated and Segregated at all Material Recovery Facilities OR Lose CRV Payments

We are concerned that this change in the "commingled rate" definition will be interpreted to mean that a commingled rate calculation and CRV payment will not be allowed for any PET beverage container bales that contain any level of PET thermoform containers. Thus, resulting in a significant loss of revenue for recyclers.

This threat of a revenue loss would in effect mandate the separation and aggregation of PET thermoform including all PET thermoform containers, lids, boxes, trays and egg cartons at our material recovery facilities. Any material recovery facility that is unable to separate and segregate thermoform PET from CRV-PET bales will not be able to collect a commingled rate for CRV-PET bales denying our recycling programs a significant revenue stream.

PET Thermoform Is Currently Being Recycled with CRV PET Bales.

PET thermoform containers are difficult and costly to separate and aggregate at material recovery facilities. Because they are a form of PET, existing technologies at our facilities do not readily distinguish thermoform PET from CRV PET. Thus, if thermoform PET is thrown in the blue recycling bin by our customers, these two types of PET will often be aggregated into the same bale. This is not a significant problem as claimed by the AB 478 sponsor since mixed bales are acceptable to many reclaimers today. A recently released Fact Sheet by the National Association of PET Resources (NAPCOR) states: "Reclaimers representing the majority of U.S. capacity report they routinely process PET thermoforms with PET bottles."

In their recent report ***"2020 PET Thermoform Recycling: A Progress Report",*** NAPCOR concludes that "PET thermoform recycling has increased substantially in the United States and Canada since NAPCOR began tracking it in 2011. Between that time and 2019 domestic reclamation of PET thermoforms has more than quadrupled, though some technical and design for recyclability issues remain."

So, while issues remain, PET thermoform can be recycled through the existing infrastructure without an expensive separation and aggregation requirement for every material recovery facility in California.

AB 478 Will Require the Material Recovery Facilities to Invest in Expensive Operational Changes, Facility Expansions AND Robotics

AB 478 will require that every material recovery facility invest millions of dollars per facility to purchase and install processing equipment and robotics that will separate and aggregate PET thermoform from PET beverage containers. Without the addition of expensive robotics at every material recovery facility in California, it is virtually impossible to ensure that no PET thermoform is in a non-thermoform CRV PET bale.

This requirement is complicated by the fact that many material recovery facilities are already space constrained and the operational changes and addition of new processing equipment will be impossible without major structural changes and permit revisions. Because there is only a small amount of thermoform currently in our recycling bins, we will be required to store thermoform PET bales for as long as a month before we have enough material to ship to a reclaimer.

Facilities that have the space will still be required to add automation to capture PET thermoform because manual sorting of this material is inefficient. As noted in the above mentioned NAPCOR report:

"Not all thermoforms are PET. Before you attempt to separate and market PET thermoforms, implement best sorting practices to minimize contamination and maximize quality. Most reclaimers currently accepting PET thermoforms prefer auto-sorted material."

Who will Bear the Cost?

While we support many of the provisions in this bill as amended on June 17, 2021, we are concerned that the bill will allow the bill's sponsor to benefit off of the current California Beverage Container Recycling and Litter Reduction Act without making any financial contribution to a program that is already under stress.
This bill revises the "commingled rate" definition in the states beverage container recycling program to benefit a material form (PET thermoform) that is not covered by, nor contributes to, the California Beverage Container Recycling and Litter Reduction Program. It is important to note that the revisions to the "commingled rate" and the resulting impacts will take effect on January 1, 2022 while the minimum content provisions that seeks to create a thermoform plastics market don't take effect until January 1, 2024.

As a result, potential loss on CRV revenues would begin in early 2022, leaving recyclers with mere months to make the operational and infrastructure changes needed to comply with the facility mandates in AB 478 without the benefit of knowing if the infrastructure changes are even feasible or will achieve the desired goal of segregating thermoform plastic from other PET.

We are concerned that the sponsors of AB 478 will benefit from the Beverage Container Recycling Act, by leveraging the definition of "commingled rate" but are unwilling to financially contribute to the program. Instead, the cost of implementing AB 478 will be shifted to others. Unfortunately, the loss of CRV revenue and the additional operational and infrastructure costs will be passed on through local rates to residences and commercial customers. This cost increase will be another in a series of rate increases based upon statutory and regulatory changes that these ratepayers can ill afford now.

Therefore, to address our concerns, we urge AB 478 be amended as follows:

- Strike Sec. 2 and Sec. 3 in their entirety to remove the negative impacts these Bottle Bill provisions will have on the recycling industry and local jurisdictions.

- We also urge the sponsors to consider a producer financial responsibility fee or assessment that contributes to a payment that recyclers receive to offset the cost differential between the cost to recycle that container type and the value that type of recycled material fetches on the marketplace.

We want to express our appreciation to the authors for being willing to discuss these concerns. We understand that they will be convening meetings during the legislative summer recess to discuss these concerns and seek resolution. We look forward to participating in these discussions.

Sincerely,

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cc: Members, Senate Judiciary Committee
The Honorable Phil Ting
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