

DRAFT STAFF RESPONSES TO ISSUES RAISED IN THE PROPOSED REVISED RPPC REGULATIONS

Effective Date of Regulations

Issue: Some product manufacturer representatives and some container manufacturers say it will take time, up to five years, for containers newly impacted by changes in the RPPC regulations to be brought into compliance with the changes.

Response: The proposed effective date of these regulations is January 2013, the start of the first full calendar year after the regulations are approved. This is consistent with other regulations that have a calendar year measurement period, such as the Disposal Reporting System regulations. The California Integrated Waste Management Board (CIWMB) specified that the Disposal Reporting System regulations became effective at the start of the calendar year following submission to the Office of Administrative Law.

That means the first time a manufacturer could be notified they were in a precertification pool of product manufacturers that could be selected for certification is March 2013. The pre-certification process provides product manufacturers with one year's advance notice that they have been identified as a product manufacturer and may be required to certify compliance. The advance notice provides product manufacturers the opportunity to identify and resolve various compliance issues prior to submitting a certification, if and when selected. Under the adopted revised regulations, the first time a product manufacturer that was in the precertification pool could be notified they have been selected to certify compliance is March 2014. The certification would be for calendar year 2014 and would be due in April 2015 (or May 2015 with an extension). This is more consistent with the Economic and Financial Impact Analysis (EFIA) timeframe for costs to replace jigs, dies and molds (Class #30.21) which has an asset life of three and a half (3½) years. Information on the equipment costs is from manufacturers that responded to the Department's 2008 RPPC survey used to prepare the EFIA.

Increased Number of Containers Will Be Subject to the RPPC Regulations

Issue: Some product manufacturer representatives and some container manufacturers say that to add another 357 million containers (including heat sealed and containers not made entirely of plastic that will now be subject to the program) goes against the legislative intent of the legislation to have a program that is manageable to implement. Some product manufacturers and container manufacturers say there is not sufficient postconsumer resin to meet the revised RPPC requirements.

Product manufacturers say the former CIWMB chose to limit the definition of containers covered by the RPPC regulations due to the ambiguity of the law and the foreseen problems as was explained in the 1994 Final Statement of Reasons. The Department continued to struggle with identifying containers and product manufacturers; has received few completed certification forms from regulated manufacturers; and has proceeded with very few enforcement actions. Plastic reprocessors and environmental groups say that virtually identical containers excluded from the existing RPPC requirements should be included in the revised regulations.

Response: The existing regulations create an unlevel playing field. The current regulatory definition includes some containers (for example: buckets with plastic handles and reclosable clamshells) that are

regulated, while other almost identical containers (for example: buckets with metal handles and “heat sealed” clamshells) are not regulated.

The 1994 Final Statement of Reasons for the original RPPC regulations (14 CCR Section 17943 (b)(30)) says a broad determination causes implementation problems and it is necessary to refine the definition of an RPPC. However, based on experience in RPPC certification cycles in the intervening years and the broad definition of an RPPC in Public Resources Code (PRC) Section 42301(f), the Department adopted revised regulations that still fall within the statutory definition. The proposed amendments are necessary to provide clarity and to create a level playing field that sets the same standards for almost identical containers that have the same landfill disposal impact and capacity for being source-reduced or made of postconsumer materials with a slightly different design.

The Department has always asked a very small percentage of product manufacturers to certify RPPC compliance in a given certification cycle. Under the adopted revised regulations, the Department will continue to use this approach.

The Economic and Financial Impact Analysis indicates that, combined, all of the containers impacted by the amended regulations use 100.1 million pounds of resin. Only 17.76 million pounds of postconsumer material is needed for manufacturers to comply with the amendments. For California-based manufacturers only 4.4 million pounds of postconsumer material is needed. According to the Beverage Container Sales and Recycling Data, Californians recycled 426.5 million pounds of beverage containers in 2010. The American Chemistry Council and the Association of Postconsumer Plastic Recyclers' 2010 United States National Post-consumer Plastics Bottle Recycling Report states that 2.58 billion pounds of plastic bottles were recycled in the United States. Nearly 99 percent of the recycled bottles are PET and HDPE resin types.

Eliminating Postindustrial Material from the Definition of Postconsumer Material

Issue: Some product manufacturer and some container manufacturers say there will be negative impacts if postindustrial material no longer counts as postconsumer material and cannot be used to meet the most commonly used compliance option, 25 percent postconsumer material. Plastic reprocessors and environmental groups say the intent of the law is to increase postconsumer plastic markets, not increase use of post industrial plastic, and to reduce RPPC impacts on disposal. Product manufacturers asked that the Department's definition be linked to the Federal Trade Commission's Green Marketing Guidelines.

Response: Neither the PRC nor the proposed language prohibits the mixing of postconsumer, post-industrial, or virgin resin to achieve compliance with the mandates. Overall the program's purpose is to help create markets for postconsumer material (see PRC Section 42300 (j)), not post-industrial material.

The proposed definition of postconsumer material has been refined to clarify that obsolete or unsold products that are commonly disposed (not reused) shall be considered PCM when used as feedstock for new RPPCs. Additionally, rejected finished plastic packaging that has been commonly disposed and not reused in the original manufacturing and fabrication process may be considered postconsumer material. However, materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process are not considered postconsumer material. The revisions made have reduced the number of concerns with this issue.

The Federal Trade Commission's Green Marketing Guidelines are strictly a voluntary business practice and they are not mandated by the Federal government and the Federal government can change the Guidelines at any time, so they have not been included in the revised RPPC regulations.

Legislative Intent, Strategic Directives and RPPC Requirements

Issue: Most product manufacturer and container manufacturers say that the revised RPPC regulations, particular source reduction, are not consistent with various legislative intents (RPPC intent, global warming solutions act intent and California Integrated Waste Management Board Strategic Directive intents). Many plastic processors and environmental groups say that the revised RPPC regulations are consistent with RPPC intent and global warming solutions act intent).

Response: There are multiple legislative and policy intents for Department programs. The RPPC statute requires that source reduction meet several requirements specified in statute (PRC Section 42301(j)). The specific RPPC requirements take precedence over general legislative and policy intent language from other laws.

Reusable Rigid Plastic Packaging Container

Issue: Several product manufacturers say that the revised RPPC regulations definition of reusable container is not consistent with statute. Many plastic processors and environmental groups say that the revised RPPC regulations are consistent with the intent to increase recycled content in RPPCs.

Response: "Reusable Packaging" is defined in Title 14, California Code of Regulations (14 CCR) Section 17943(z). Product manufacturers are concerned that the proposed regulations change the definition of reuse to exclude containers that store the original product sold in the container. There is no intent evidenced to exclude certain types of reusable packages (which would also otherwise be a component of solid waste generated in the state). There is nothing in the term "original product" that specifies that it doesn't also include the same type of product that is sold with the intent of continuing to store it in the original RPPC – the potential impact on the solid waste stream would be the same. Where the Legislature intended to exclude certain products, it did so explicitly (see PRC Section 42310.1) and it would be incorrect to imply an exclusion from this term used within a definition where there is no distinction in the packaging required for the same type of product sold to be used in the same container. Therefore, the revised regulation is clarifying this issue by defining original product to also include replacement product because there has been confusion over the meaning of this term in the past.

Resin Switching as Source Reduction

Issue: Most product manufacturer and container manufacturers say that the existing RPPC regulations have always allowed resin switching as a method to achieve source reduction and that source reduction is at the top of the waste management hierarchy. They say greenhouse gas emissions would be reduced if resin switching were allowed. They also say source reduction is the best option for compliance because there is not sufficient postconsumer material available for newly added containers. Most

plastic reprocessors say that allowing lighter weight virgin resin to be used for source reduction is counter to spurring postconsumer plastic markets, the lighter weight virgin resin can be a contaminant that impacts the ability of more commonly recycled resins to meet quality standards and greenhouse gas emissions are reduced when recycled resin is used as compared to virgin resins. Some environmental groups say that statute does not allow resin switching as source reduction. This involves two definitions in the revised RPPC regulations: the definitions of source reduced container and material type.

Response:

Background:

PRC Section 42301(j):

(1) "Source reduced container" means either of the following:

(A) A rigid plastic packaging container for which the manufacturer seeks compliance as of January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with the packaging used for that product by the manufacturer from January 1, 1990, to December 31, 1994.

(B) A rigid plastic container for which the manufacturer seeks compliance after January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with one of the following:

(i) The packaging used for the product by the manufacturer on January 1, 1995.

(ii) The packaging used for that product by the manufacturer over the course of the first full year of commerce in this state.

(iii) The packaging used in commerce that same year for similar products whose containers have not been considered source reduced.

(2) A rigid plastic packaging container is not a source reduced container for the purposes of this chapter if the packaging reduction was achieved by any of the following:

(A) Substituting a different material type for a material that previously constituted the principal material of the container.

(B) Increasing a container's weight per unit or use of product after January 1, 1991.

(C) Packaging changes that adversely affect the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material.

Current 14 CCR Section 17943(b) (14) "Material Type" means broad feedstock categories such as paper, glass, plastic or aluminum. "Material type" does not mean individual plastic resins.

Proposed 14 CCR Section 17943(i) "Material Type" for purposes of this Article means feedstock categories, such as, but not limited to, paper, glass, or aluminum and individual plastic resins.

Analysis:

PRC Section 18015, added in 1988 and amended in 1989, predating Senate Bill 235 which created the Plastic Packaging Containers program, uses the term material to mean a single resin type. PRC Section **18015** states:

(a) All rigid plastic bottles and rigid plastic containers sold in California on and after January 1, 1992, shall be labeled with **a code which indicates the resin** used to produce the rigid plastic bottle or rigid plastic container. Rigid plastic bottles or rigid plastic containers with labels and basecups of a different material shall be coded by their basic material.

The numbers and letters used shall be as follows:

- 1 = PETE (polyethylene terephthalate)
- 2 = HDPE (high density polyethylene)
- 3 = V (vinyl)
- 4 = LDPE (low density polyethylene)
- 5 = PP (polypropylene)
- 6 = PS (polystyrene)
- 7 = OTHER (includes multilayer)

- (b) A "7" shall appear below the resin abbreviation when the bottle or container is composed of more than one layer of that resin.

The Rigid Plastic Packaging Container statutes do reference PRC Section 18015. PRC Section 42301(i) defines RPPC "Recycling rate" to mean the proportion, as measured by weight, volume, or number, of a rigid plastic packaging container sold or offered for sale in the state that is being recycled in a given calendar year, that is one of the following:

- (1) A particular type of rigid plastic packaging container, such as a milk jug, soft drink container, or detergent bottle.
- (2) A product-associated rigid plastic packaging container.
- (3) A single resin type, as specified in Section **18015**, of rigid plastic packaging container, notwithstanding the exemption of that container from this chapter pursuant to subdivision (b), (c), or (d) of Section 42340.

PRC Section 42301(l) also indicates that "PETE" polyethylene terephthalate should be defined consistently with PRC Section 18015.

For the above reasons, Department staff has determined that the definition for "Material type" in regulations should be changed to be more consistent with above referenced existing statutory language.

Both the Economic and Financial Impact Analysis and California Environmental Quality Act Initial Study and Negative Declaration concluded that changing the regulation to eliminate resin switching would likely result in use of a different compliance option, which would increase the use of postconsumer resin and would reduce the amount of carbon dioxide equivalents in avoided GHG emissions by directly reducing the amount of virgin resin used to manufacture through the substitution of postconsumer resin to meet the 25 percent postconsumer compliance option. The studies examined indicate that, combined, all of the containers impacted by the amended regulations use 100.1 million pounds of resin. Only 17.76 million pounds of postconsumer material is needed for manufacturers to comply with the amendments. For California-based manufacturers only 4.4 million pounds of postconsumer material is needed. According to the Beverage Container Sales and Recycling Data, Californians recycled 426.5 million pounds of beverage containers in 2010. The American Chemistry Council and the Association of Postconsumer Plastic Recyclers' 2010 United States National Post-consumer Plastics Bottle Recycling Report states that 2.58 billion pounds of plastic bottles were recycled in the United States. Nearly 99 percent of the recycled bottles are PET and HDPE resin types.

Based on product and container manufacturer comments, the reduced container weights reduce total product weights resulting in transportation cost savings. This indicates that even if resin switching were

not allowed as a compliance option, manufacturers will continue to use lighter resins. Resin switching does not hold back the technology to separate and recycle specific resins.

Based on the Department's waste management experience and comments received from plastic recyclers/reprocessors, allowing manufacturer compliance through resin switching will reduce the availability of postconsumer material and have an adverse effect on recycling of RPPCs and further reduce the amount of postconsumer material available for other manufacturers to demonstrate compliance. Without recycling opportunities the increased amounts of the #3 through #7 resins will mean more RPPCs being disposed in California's landfills or exported out of California and the United States.

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