

Response to Comments, Revised Legislative Report PTB Program and a Comprehensive Approach to Film Plastic Diversion

February 7, 2005

RESPONSE TO COMMENTS: 30-DAY PUBLIC COMMENT PERIOD ENDING JANUARY 21, 2005, FOR THE REVISED LEGISLATIVE REPORT REGARDING THE STATUS OF, AND RECOMMENDATIONS PERTAINING TO A COMPREHENSIVE APPROACH TO FILM PLASTIC DIVERSION AND THE PLASTIC TRASH BAG LAW (DECEMBER 2004)

INTRODUCTION

Board staff wishes to thank all stakeholders who participated in January 6, 2005, Interested Parties Meeting at which the Revised Legislative Report was discussed. Staff provided information and clarification of the revised report during the meeting. This document summarizes staff's response to written comments submitted during the 30 day comment period ending January 21, 2005.

GENERAL WRITTEN COMMENTS

Comment 1: Requests for extension of the comment period.

We are requesting an extension for the written comment period for the following reasons: the significant shift in the staff's recommended approach from regulatory to voluntary, with potential fee payment for failure to meet MOU provisions requires extensive consideration; due to the holiday season there is not enough time to fully review and discuss the report; and the proposal affects many more stakeholders than the trash bag manufacturers who have been the main industry group involved. Do not rush to finalize the report in light of the amount of time invested in these issues to date without adequate consideration.

Response 1:

The Board extended the comment period by two weeks from January 7, 2005 to January 21, 2005. This extension provided stakeholders with a 35 day comment period. The primary discussion item at the January 6, 2005 Interested Parties meeting was the December 2004 draft report. A number of stakeholders provided comments at that meeting.

Board staff has scheduled the next Interested Parties meeting for February 22, 2005. The stakeholders will have an opportunity at that meeting to discuss a number of the implementation details that have been raised in the submitted comments, below.

Report Changes: We appreciate the comment. No change to the report is required.

Reference: 2 and 3

Comment 2: We support the report's recommendations to increase the diversion of film plastic products through voluntary approaches.

The December recommendations have changed significantly from previous versions that CFECA opposed. The board staff and members working on this report have demonstrated they are willing to listen to industry concerns and consider innovative ideas to achieve increased diversion rates. FBF and CBFA appreciate the changes in the December draft report and the elimination of the mandated recycled content or mil tax proposal contained in the September version. CBFA applauds the efforts of CIWMB staff to think out of the box and develop innovative approaches to landfill diversion and support the concept of increasing diversion of plastic film and bag products through voluntary approaches sponsored by industry or individual plastic manufacturers.

APC believes that this latest version is complimentary to our position in identifying reasonable policies to achieve the increased diversion of plastic film products from disposal and applaud CIWMB for moving this dialogue to a position that supports further collaboration between the public and private sector. We believe that the recommendations to “negotiate and execute MOU with the film industry stakeholderand establish plastic diversion goals and targets for 2008” are clearly a step in the right direction. However, before CIWMB moves to enact statutory changes to implement the MOU process, additional outreach to potentially affected stakeholders – both in public and private sector is essential.

Poly-America appreciates the significant revisions made by the staff in the recommendations section of the report. The new draft replaces a proposal that continued to depend on recycled content requirements for trash bags as well as a variety of other plastics products with a new concept built around Memoranda of Understanding entered into by the Board and various industry sectors. We believe that this is an improvement, because it is less regulatory, less prescriptive and relies on industry participation and input into solutions designed by industry.

All of the aforementioned industry groups have many questions and feel that since the report contains such comprehensive new concepts and new film targets, the board should continue to look at these policy proposals and answer the many questions being raised regarding the mil fee, repeal of the trash bag law and the MOU process.

Response 2:

The proposal(s) contained in the report is in response to stakeholders' input and their expressed desire to pursue film plastic diversion through a voluntary shared responsibility approach. The Board will continue to working with the various stakeholders through the Interested Parties meetings, workshops, roundtables and the several working groups that have been formed to address specific issues. Board staff foresees the need for additional work groups for the MOU process, stakeholder identification by film product category, and the mil fee. Specific concerns raised by the aforementioned parties will be addressed below.

The report's recommendations include having the Board granted the authority to suspend the Plastic Trash Bag Law and negotiate MOUs for the diversion and recycling of film plastic

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products. Further, the proposal would contain a provision to repeal the Plastic Trash Bag Law following the execution of the MOUs. Finally, a mil fee is proposed to be implemented if the MOUs cannot be negotiated or the diversion goals are not met.

The Board seeks input from the various stakeholders on the report recommendations and issues raised in the comments. The Board reiterates that it does not have a predetermined course of action to address the problems of diverting and recycling film plastic products in California.

Report Changes: As explained in the responses, below, the report has been changed with respect to implementation details.

Reference: 6, 7, 8, 10 and 11

Comment 3: The report does not provide a sufficient level of detail about the MOU process.

There is concern that the revised report does not provide adequate detail regarding key points hindering the industry's ability to comment on the substance of the recommendations. The draft report makes reference to the fact that the MOU process is similar to that being used by the carpet and paint industries. Such "apples to apples" comparison cannot be made. The market place for carpet and paint is much different than plastic film. As based on the Waste Categories the film products are very diverse and the diversion tactics may be very different for various products. Questions regarding the MOU process, stakeholder involvement and goals include:

- a. What will be the goals of the proposed MOUs to be negotiated with stakeholders?
- b. Are there specific targets (e.g. tonnage of material recycled) that must be required of each firm, each type of film product, and the entire plastics industry? How would these targets be derived and verified?
- c. How would the MOUs be negotiated and how does the process work?
- d. What materials would be covered by the MOUs?
- e. How will the stakeholders be identified and chosen?
- f. Who are the primary stakeholders? No where in the report are these entities define.

Response 3:

The Board recognizes that film plastic products can be very diverse in manufacturing, distribution and actual use. The proposal for more than one MOU further recognizes that the diversion goals and strategies as well as the collection and recycling/reprocessing mechanisms can be very different for the various film plastic categories.

The Board believes that the primary goal of the proposed process is the diversion of film plastic from disposal in California's landfills. The Board does not have specific target amounts. Further, each MOU will most likely have different secondary goals. The MOUs would, most likely, address increasing collection of the film plastics, quality standards for recycled material, education and outreach and potential pilot projects.

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The Board envisions targets for various film types (e.g., agricultural film, shopping and grocery bags, stretch wrap), but does not envision targets for individual manufacturers or stakeholders. It is possible that specific industry/trade associations could have specific responsibilities. Individual companies or organizations could commit to specific actions/activities that support the attainment of MOU goals.

The Board will seek to identify primary stakeholders before the legislation is enacted. The primary stakeholders are viewed as those parties that can create a “critical mass.” This would include the largest/dominant manufacturers, distributors and end users in each of the MOU/film product groups. Other primary stakeholders include local governments, waste collectors and postconsumer material recyclers and suppliers. The Board welcomes suggestions from currently engaged stakeholders as to the other stakeholders that should be participating in this process. The Board will use a variety of resources/databases to identify manufacturers, distributors and trade associations of various film plastic products. The identification of users of the film plastics may be much more difficult. The Board’s vision is for an inclusive process, we do not want to exclude anyone.

Report Changes: Comments noted. No change to the report is required. The details will be addressed as a part of the collaborative process.

Reference: 3, 5, 6, 7, 8, and 10

Comment 4: How do you negotiate a MOU with stakeholders whose interests are extremely diverse?

There is concern that the revised report does not provide adequate detail regarding key points hindering the industry’s ability to comment on the substance of the recommendations. We are concerned about the broad representations of participants required to be included in the MOU negotiations could never agree and implement an MOU. It is also unclear how the Board would force manufacturers of these products to both participate in an MOU negotiation and in the actions necessary to achieve the prescribed diversion goals. Questions regarding dispute resolution for the MOU process include:

- a. How would the MOUs be negotiated? What process would be used to resolve disputes if an agreement cannot be reached or there is an alleged deviation from the agreement?
- b. How would the very divergent interest groups successfully negotiate and agree on mechanisms and diversion rates (local/state governments; recyclers; waste collectors; and industry)?
- c. How does the board envision successful negotiations with all of the entities called for in the recommendations including manufacturers, distributors, retailers, waste collectors, recyclers, reprocessors and local and state government agencies? What happens if they don’t all agree on certain issues such as diversion goals, tactics necessary to divert film? What constitutes agreement?

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Response 4:

The stakeholders asked for a voluntary approach and indicated support for increased collection and diversion of film plastic products. The stakeholders stated that an “open loop” recycling process would be much more successful than a “closed loop” system. The Board feels that it can provide the leadership for a successful collaborative process and to identify appropriate roles for disparate interests to support that objective.

The Board does not believe that all stakeholders must participate in the MOUs for them to be successful. We must reiterate that the Board does not intend to force individual stakeholders or groups of them to participate. To initiate the process, Board staff envisions meeting with the primary manufacturers and users of a particular film plastic product. This group would develop the initial goals and strategies. From this conceptual agreement, the Board and other stakeholders would expand to other stakeholders to expand the group and refine the goals and strategies. At this point, the Board would prepare a draft MOU for discussion purposes. The Board sees its role as both a facilitator and an advocate in the negotiations. The Board is open to use a third party facilitator if needed.

If disputes arise amongst stakeholders during the implementation of the MOUs, Board staff will make every effort to resolve these disputes to ensure that the goals of the MOU are not jeopardized. If questions arise about whether the goals of the MOU are met, then the dispute/issue will be brought to the Board for resolution before the mil fee could be imposed.

Report Changes: The comments were appreciated and noted. No change to the report is required.

Reference: 3, 5, 6, 7, 8

Comment 5: The timeframes to analyze the legislative proposal; to negotiate the MOUs; and to divert material are too short.

The timeframe for negotiation and implementation of an MOU is not long enough. A similar effort in the paint industry has been ongoing for several years. Our experience in this activity indicates that a significant amount of time is required to identify all of the stakeholders, identify the issues and address potential solutions to each of the issues. There are too many affected parties and new industry segments are being affected that may not have enough background to being immediately understand the issues at hand. More time is needed to thoroughly vet all of the issues before submitting a report to the legislature.

Questions and comments regarding the time allotted for the MOU process include:

- a. Is the Board allowing enough time in the proposed action plan to allow stakeholders to fully implement the MOUs, adjust practices, and invest in new equipment to effect positive change?
- b. More time is needed for stakeholders to analyze staff recommendations to create an MOU, in particular there is a need to determine how such MOUs might or might not work and the impact it will have on members of the association.

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- c. We suggest CIWMB hold additional workshops, perhaps in southern, central and northern CA to solicit input from local government officials, agricultural interests, retailers, grocers, shopping center interests, recyclers, consumers and other interested parties before finalizing this concept.
- d. It appears that the timeframes to negotiate the MOUs are not workable and too short. Even if the MOUs were negotiated by Jan 2006 it seems that it would be challenging to agree on diversion requirements and implement programs before a mil fee would go into effect in July 2009.
- e. The framework is being established to create a collaborative process, but the timelines initially suggested for negotiating and meeting targeted goals is overly optimistic. We suggest the framework for negotiating the MOU and subsequent dates by which to benchmark the success or failure of the waste diversion targets be extended to perhaps 2008 and 2010 respectively.
- f. It seems to be a challenge for staff to conduct a limited number of compliance certifications for RPPC and Trash Bag manufacturers so how would the staff be prepared to assess the fee on thousands of products in a six-month timeframe?

Response 5:

The Board believes that the time period from March 2005 until December 2006 is a reasonable amount of time to identify and notify stakeholders, and to negotiate the MOUs. Further, the Board feels that the initial 2-year MOUs do allow sufficient time for diversion activities. It is hoped that the MOUs can be tailored to achieve reasonable short-term goals. These MOUs, which will be statewide in application, should not be as complex as national MOUs would be.

The Board welcomes comments and input that addresses the changes that will be necessary to increase the diversion of film plastic within the next four to five years. The current proposal was a response to the stakeholders asking for a voluntary process to divert film plastics. The legislative proposal was developed as a result of a suggestion by stakeholders to use the Board waste characterization studies as the basis for measuring waste diversion. The next study is scheduled for 2008. To be able to use that study as a measurement tool, it will be necessary to complete MOU negotiations by the end of 2006 or the stakeholders' diversion efforts must commence before completion of the MOUs.

Should it become necessary to collect a mil fee, the Board would likely engage the Board of Equalization to assess and collect the fee.

Report Changes: The comments are appreciated and noted. No change to the report is required.

Reference: 1, 3, 6, 7, 9, and 10

Comment 6: We have questions and concerns about how the Mil Fee will be imposed and collected.

It appears that the MOU process and negotiations are just a preordained path of assessment of a mil fee on plastic film products. The MOU proposes to assess a mil fee on parties who either fail to enter into an MOU or who fail to meet the obligations of the MOU. We believe that it is unfair for a company that has met its obligations under an MOU to incur a fee on its product because of failure of others in the industry to do the same. We are concerned that the Board will be able to bring all affected manufacturers to the table, and that those who do participate could well end up paying the mil tax anyway based on lack of participation by other manufacturers. Concerns regarding the mil fee include:

- a. The recommendations state that the size of the fee will be dependent on the specific goals that are established. Are these goals established in the MOU process? If not, whose goals? The stated goal of the recommendations is to have film diversion succeed voluntarily, but it appears that the conclusion has already been made that the mil fee will be enacted.
- b. What if some manufacturers DO participate and some refuse? Will the mil fee be on every manufacturer's products, even the manufacturers that did initiate film diversion activities? Why would anyone participate in the MOUs if their competitor decided not to?
- c. What would be the specific set of conditions that the Board would use to institute the proposed mil fee? Would the revenue be used to finance the construction of public or private facilities? Who would be responsible for managing those resources and deciding which projects to fund? How would it be collected?
- d. How would imported be identified so as to collect the proposed mil fee? If not addressed this would give a competitive advantage to the importers and negatively affect US employment.
- e. A mil fee should not be automatically triggered and is a rush to judgment. It is possible that the implementation of an MOU that established targets and goals will result in completely different market behavior. The stakeholder groups should be given the opportunity to regroup and reassess the results of the MOUs targets and goals. The goal of the MOU should be to achieve the results without having to enact a fee. We strongly suggest that the mil fee be eliminated from the legislative package so that the MOU process is given ample time and opportunity to be successful.

Response 6:

The Board feels that the comments have mis-interpreted the intent of the report's recommendation regarding implementation of the mil fee. The Board's goal is to divert more film plastics through increased collection and recycling to meet market demand.

The diversion goals and strategies would be formally established as part of the MOU process. It is the Board's hope that many of the goals could be identified and refined before the passage of legislation and the beginning of formal negotiations of the MOUs. Success would be measured by increased film plastic recycling and not having to impose a mil fee. Another measure of

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success would be for the stakeholders to invest monies, equal to what the mil fee would collect, in expanded recycling infrastructure.

It must be stressed that the proposed mil fee is not a tax. It is a fee much like other fees (used oil, waste tire, electronic waste, etc) that are collected to support specific Board-administered programs. In general, the monies from these fees are used to increase recycling or mitigate the environmental and resource impacts of municipal solid waste. In this instance the mil fee will be used to support the increased collection and recycling of film plastic in California.

It is expected that some manufacturers of certain film products will participate while some of their competitors will not participate. Many stakeholders have told the Board that they are interested in diverting film plastic and view the MOU process as a way to implement such a strategy. The diversion goals will probably require stakeholders to actually divert material not just the initiation of diversion activities.

The Board believes that the MOU process is a shared responsibility of the many stakeholders. Success or failure will depend on the actions of the groups and not the work (or lack thereof) of individual stakeholders. The MOU process does not have a preordained outcome that will lead to a mil fee being imposed.

The Board foresees revenues from the mil fee, if the fee is collected, would be available to both public and private organizations. The revenues would probably be used more for activities such as project development and environmental review with actual construction financing from Recycling Market Development Zone (RMDZ) loans and/or Board administered grants.

The current proposal is to levy the mil fee at the “first point of sale within California.” The fee would be collected from wholesalers, importers, distributors as well as manufacturers who sell directly to the end user of the film products. The issue of collecting fees from companies located outside of California is not unique to film plastics. It is an issue that the State of California confronts on a daily basis regarding goods ranging from tires, to used oil, and now electronics.

The proposal uses a “carrot and stick” type of approach. The proposal of the voluntary MOUs to divert film plastics from disposal is an alternative to the mandated minimum recycled content approach of the current trash bag law. The Board views this proposal as workable compromise to ensure that stakeholders remain engaged in the voluntary process.

Report Changes: The comments are appreciated and noted. No change to the report is required.

Reference: 3, 5, 6, 7, 8, 9, 11 and 13

Comment 7: Participation of out-of-California manufacturers and distributors.

We have questions regarding the current recommendations, the MOU process with respect to importers:

- a. How will the Board force manufacturers outside of the state and country to participate in MOUs?
- b. How would the board ensure that all manufacturers, wholesalers and distributors pay the mil fee?
- c. How do you force out of state manufacturers, wholesalers and distributors to participate in MOUs

Response 7:

The Board understands that out-of-state and/or out-of-country companies present challenges. The MOU process is not intended to force anyone to participate. Participation in this process will be voluntary. Many stakeholders have indicated to the Board that the MOU process is the preferable process.

The Board recognizes that each stakeholder will have a different incentive for participating. The possible implementation of the mil fee creates an incentive for many manufacturers, wholesalers and distributors to participate. The establishment of diversion goals will be incentive enough for others. Local governments may participate to reduce waste collection and disposal costs. Some will participate because they realize that increasing the diversion and recycling of film plastics benefits all Californians.

Ensuring that all parties pay the mil fee is dependent on identifying the responsible parties prior to the initial assessment. One of the functions of any fee system is auditing of fee-payers to ensure that the proper amount is imposed and paid. These issues apply to in-state companies as well as those not in California.

Report Changes: The comments are appreciated and noted. No change to the report is required.

Reference: 5, 6, 7, 8

Comment 8: “Biodegradable” products should not be exempted from the comprehensive approach to film plastics.

We disagree that “biodegradable plastic film products meet the objectives of a comprehensive plastics management program” and should be exempted from the proposed program. It is unclear exactly what “biodegradable plastic” products are and how they react in different environments. Specific concerns are:

- a. The report should not use the term “biodegradable plastic” in conjunction with the ASTM 6400 Standard Specification. This specification is specifically limited to

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- plastics that meet certain composting requirements. ASTM has not developed or recognized a standard specification for “biodegradable” plastics
- b. The report makes a provision for exemption of biodegradable products that meet ASTM D6400. Additionally the report states there is an expectation that participants in the MOU process will develop programs/projects to divert exempted products. If the products are exempted it doesn’t make sense that the manufacturers would be participating in the MOUs. Why would manufacturers of products that are not exempt choose to initiate programs for materials that are exempt?
 - c. We take issue with the term “biodegradable film plastics” Polyethylene doesn’t really biodegrade; it just breaks into smaller pieces. The effect of these small plastic bits on the environment is unknown.
 - d. What steps would the Board take to improve foreign compliance for “biodegradable” products?
 - e. Bio-based products are a contaminant for the reclaimers of polyethylene-based film. Great care should be taken to prevent the contamination of existing recycling programs and markets. Great care should also be taken to ensure that “biodegradable” products are not falsely promoted as the panacea for the state’s marine debris and litter challenges.
 - f. Until such composting facilities are constructed and fully operational, biodegradable bags will continue to go to landfills and their degradation will be at a rate comparable to non-biodegradable bags. Until biodegradable products are demonstrated to be diverted from solid waste stream (i.e., from landfill), they generate no benefit to justify a regulatory preference (i.e., exemption).
 - g. Producers of biodegradable bags should participate in the MOU process and not be granted regulatory preference (i.e., exemption), unless and until they demonstrate that their biodegradable products, in fact, have been diverted from the waste stream. We would support exempting compostable plastic products to the extent they are actually diverted and composted.

Response 8:

Staff is proposing to eliminate the exemption for biodegradable and compostable material. The Board understands that the term “biodegradable” has many possible definitions and that producers of such products may use the term to improve their sales. The ASTM 6400 standard applies to compostable material--not biodegradable plastic material.

The Board believes that producers of biodegradable, degradable, and compostable products should participate in the MOU process.

Report Changes: This section of the report will be changed to eliminate the exemption for biodegradable and compostable materials.

Reference: 5, 6, 7, 10, 12 and 13

Comment 9: “Biodegradable products” should be exempted.

The California Compost Coalition is in support of the recommendations put forth by your staff. The CCC particularly favors the exemption from the mil fee for biodegradable plastics in the hope it will facilitate the continued production, and possibly expanded production, of compostable plastics, minimizing contaminant levels in feedstocks and finished product at compost facilities.

Response 9:

The Board believes that it is premature to grant exemptions, and it is a relic of an earlier draft of the report that focused on minimum content certifications for a broader range of film products. See Response 8 for a discussion of “biodegradable” film plastics.

Report Changes: The comments are appreciated and noted. However, this section of the report will be changed to eliminate the exemption for biodegradable and compostable materials.

Reference: 15

Comment 10: The recommendations regarding suspension and repeal of the plastic trash bag law are unclear, confusing or contradictory.

The report is contradictory in the language in several sections of the report regarding repealing the Plastic Trash Bag Law if the mil tax is enacted in one section then suggests repealing the PTB Law if the MOUs are negotiated and extended. Please clarify the following:

- a. The recommendations are very unclear and confusing relative to the suspension of the PTB Law. In one portion the report states the PTB law will be repealed if a mil fee is assessed in either 2007 or 2009. In the body of the report the proposal recommends that “the current trash bag law would be repealed at the time when diversion targets are either met or the mil fee is implemented for failure to meet those targets.” And in another section in the actual legislative recommendations, Phase 4 requires the extension of the MOUs and repeal: “if MOUs are established and successful at meeting the specified diversion targets, the fourth phase would commence with continuation of the MOUs and establishing new diversion targets. The fourth phase would include repeal of the current plastic trash bag law”. Does the board envision starting over with new goals and then repealing the trash bag law? What parameters are to be established for the new diversion requirement?
- b. Trash Bags are destined for the landfill as it is their role. They will never be diverted and source reduction is the only viable option which supports repeal of the minimum content law to enable manufacturers to return to source reducing bags.
- c. This could lead to sabotage of the MOU process by industry or actions could be taken to ensure that diversion goals are not met.
- d. It seems that the conclusion that the PTB Program should be repealed no matter what happens.

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Response 10:

The concept of legislative proposal is fairly simple; however, the details could be complex. The proposal in the report was: (1) for the legislature to suspend enforcement of the trash bag law after completion of the current certification; and (2) to repeal the plastic trash bag at such time as a mil fee is imposed of plastic trash bag, or when the diversion goals of the negotiated MOU are met.

Based on the stakeholders' comments, Board staff has revised the report to include: (1) have the legislature grant the Board the authority to suspend enforcement of the Plastic Trash Bag; and (2) repeal the law at the time the MOUs are executed (i.e., approved and signed by the Board).

The Board does not believe that there is an incentive for stakeholders to sabotage the MOU process, because the mil fee could be imposed as a result.

It was the Board's position in adopting the *Plastics White Paper* and in preparing this report that the Plastic Trash Bag Law should be repealed when a more comprehensive approach to the management of film plastic products is implemented.

Report Changes: The Board will revise the report to recommend that the Board be granted the authority to suspend the trash bag law while the MOUs are being developed, and to repeal the trash bag law upon their execution.

Reference: 6, 7, 8

Comment 11: Trash bag manufacturers should not be subject to two environmental requirements.

Poly-America believes that the PTB Law should be suspended as soon as possible and we urge the Board to seek repeal if the Law in 2005 because it is inconsistent with the new approach proposed by staff. Under the new proposal the Board would be given the authority to impose a mill fee on parties who do not meet their MOU obligations. The threat of the mil fee is intended to create a strong incentive for companies to honor the MOU, and we agree it will do so. With the effective "hammer" of a mill fee, there is no need to retain the trash bag law. In fact, if it is retained, trash bag manufacturers will be singled out as the only film plastic sector subject to two onerous requirements: a mill fee and the recycled content requirements in the trash bag law. This is unfair as we are the only film plastic sector that, for the last thirteen years, has been subject to the regulation of its products.

Response 11:

The proposal is to have the legislature grant the Board the authority to suspend enforcement of the plastic trash bag law. The Board finds repeal of the plastic trash bag law in 2005 to be premature

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It is not the Board's intent to impose two regulatory requirements on the plastic trash bag manufacturers. Under the Board's proposal the trash bag law with its minimum content requirement would be repealed at the time that a mil fee is imposed on plastic trash bags.

Report Changes: *The report will be revised to clarify that the proposal is to repeal the plastic trash bag law when the MOU diversion goals are met or when a mil fee is imposed.*

Reference: 11

Comment 12: Why not use financial incentives to promote diversion?

Has the board considered an incentive based system to promote reductions in the waste stream instead of a punitive taxed based system? This systems seems to work for the number of aluminum cans in the waste stream, why won't this work for plastics materials? We suggest that the Board considering offering a tax credit to companies that participate and perform in diversion programs rather than a mil tax as a penalty. Another recommendation is that the Board creates a means to credit companies actively engaged in the process of diverting plastic materials from landfills commensurate with their relative success in those efforts. Sanctions should be imposed on nonperformers.

Response 12:

California's beverage redemption law is not really an incentive based program, it collects fees. Such a program operates by having the seller of a product collect a deposit fee that is returned to the person redeeming the product. Under California beverage redemption law the redemption value is based on the product or size of container not the type of packaging material. The different recycling rates between aluminum (80 percent) and plastic (42 percent) containers indicates that there are forces beside the redemption value that result in significantly higher recycling rates for aluminum containers. Furthermore, the fees associated with this program are far larger than the mil fee proposed as a contingency under the staff's proposal.

As stated in previous comments the Board's proposal is based on suggestions from stakeholders for a more voluntary process.

The creation of a tax credit may have negative consequences for the State's General Fund in these times of ongoing budget deficits. Based on the Board's previous experience through administering the recycling equipment tax credit; a tax credit reduces the company's tax liability, without any direct relationship to the amount of material that is diverted. Therefore the law was allowed to sunset. Additionally, many out-of-California companies may not incur a California tax liability and would receive no benefit from diversion activities that they supported.

Conversely, the proposed mil fee would be directly applied based on the amount of film plastic products sold. The revenues collected by the fee would be used to create new or expand existing diversion, recycling and re-processing facilities and programs.

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Report Changes: *The comments are appreciated and noted. No change to the report is required.*

Reference: 3, 7, and 13

Comment 13: Post consumer content minimum requirements.

The available supply of quality PCM continues to diminish and grow more expensive for a variety of reasons (e.g., like new and growing markets for plastic lumber, railroad ties and other plastic products that can be made from recycled materials.) There isn't enough quality PCM available for use in bubble cushioning or trash bags.

The cotton industry should be exempt because it must be packaged in virgin film plastic and is shipped out of California. Federal Code of Regulations Title 7, Chapter XIV part 1427 subpart A section 1427.5 clearly states that for cotton to be eligible for the federal loan program it must be packaged in materials which meet the specifications adopted by the Joint Cotton Industry Bale Packaging Committee. These specifications dictate the use of 100% virgin materials for polyethylene and polypropylene bags.

Alternatives to stretch wrap packaging have environmental impacts and stretch wrap for hazardous material transport should be exempt. There are several uses of stretch wrap or plastic film in our industry. It is acceptable as an "overpack" for protection or convenience in handling a pack or to consolidate two or more packages. Clarification on the issue giving stretch wrap an exemption as it is used as overpack for goods that are hazardous materials from the Department of Transportation is welcomed.

Response 13:

Board staff believes this comment was directed at a previous version of the report that contemplated minimum content requirements for a variety of plastic film products. The report no longer contemplates a minimum content approach. Therefore, the comment is not germane to the current draft of the report. Given the current approach, packaging materials are appropriately being targeted for collection and recycling, and therefore should not be exempt.

Report Changes: *The comments are appreciated and noted. No change to the report is required.*

Reference: 1, 9, and 13

Comment 14: Plastic Trash Bag Law has had small impact on diversion; repeal the law.

There does not appear to be any correlation between repealing the current PTB Program and the enactment of a new fee. The law has had little effect on polyethylene diversion given the present demand by the domestic composite lumber market. CIWMB should repeal the PTB Program

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and reassign staff and financial resources to other plastic activities. Why is IWMB reluctant to recommend an outright repeal of the law? We do not believe the recommendations in the latest revised draft report offer a viable solution to the problems currently faced by trash bag manufacturers and in fact they would create a new state bureaucracy for the trash bag industry. There would be technical challenges for the company and a threat of a mil-fee for non-compliance.

Response 14:

The Board has made it clear that it will not support repeal of the plastic trash bag law until something better is in place. The Board does not have the authority to repeal a law. That power rests with the state legislature and the governor.

Report Changes: The report will be revised to recommend suspending the law during the development of the MOUs, and the repeal of the trash bag law upon their execution.

Reference: 4 and 10

Comment 15: Grant the Board the authority to suspend the Plastic Trash Bag Law.

Page 4 of the report recommends suspending {legislatively} the Plastic Trash Bag Law. We oppose this recommendation. The Plastic Trash Bag Law, despite its flaws, is the main existing law dealing with plastic film. We would support a recommendation to provide the Board with the authority to suspend the Plastic Trash Bag Law once the Comprehensive Film Plastic Management Program is in place.

Response 15:

The legislative report will contain a recommendation for the legislature to grant the Board with the authority to suspend enforcement of the plastic trash bag law after 2004 reporting period manufacturer and wholesaler certifications including the granting of any exemption requested by manufacturers during the negotiation of the MOUs.

Further, the legislative report will be revised to call for repeal of the law when the MOUs are executed.

Report Changes: The report will be revised to recommend suspending the law during the development of the MOUs, and the repeal of the trash bag law upon their execution.

Reference: 12

Comment 16: Focus Board resources of other categories of municipal waste.

Regulatory resources might more effectively be used to address the problem of reducing the solid waste stream by focusing on the greater opportunities which appear to be available to reduce organic matter, construction/demolition debris and paper bound for landfill. The landfill problem is not simply or even largely a plastics problem.

Response 16:

For years the Board has targeted the other material types in the waste stream, namely paper, construction and demolition materials, and organics. The relative decline in amount of paper and organics being disposed is the result of the Board and other stakeholders work in reducing, re-using and recycling these waste materials. The Board has and is still focusing on these other material categories. However, the most recent waste characterization study shows the amount of film plastics in the waste stream grew by about 25 percent, or 380,000 tons, between 1999 and 2004. Film plastics now constitute 4.3 percent, which makes it one of the largest sub-categories of municipal waste. Plastics, in general and film plastics in particular, are the least recycled of the material types at approximately 5 percent. And finally, plastics have significant environmental impacts and there are available markets for the material once it is recovered.

Report Changes: The comment is appreciated and noted. No change to the report is required.

Reference: 13

Comment 19: Trash bags are designed to go to the land fill the industry goal is source reduction.

Clorox's new Force Flex Bags represent a 4% reduction in plastic while holding a larger volume than the non Force Flex Bags. We are continually looking for ways to make our bags thinner and stronger through scientific research and development practices and feel that the government-negotiated MOU will limit our efforts in innovation.

Poly-America urges the Board to consider the unique situation plastic trash bags manufacturers face if the proposal is implemented. The goal of the MOU is to commit the parties to increasing the diversion of film plastic from the landfill. Because the sole purpose of a trash bag is to go to the landfill, it is a unique product that presents no options for landfill diversion. Source reduction in manufacturing is the best solution for trash bags. Poly-America wants to stress we do not propose that you exclude trash bags from the program so that our company can escape your new program. In fact, Poly-America manufactures a variety of other products that would be subject to this proposal, and we will be an active participant in crafting and meeting MOU requirements for those products.

Response to Comments, Revised Legislative Report PTB Program and a Comprehensive Approach to Film Plastic Diversion

Response 19:

The Board is committed to working with trash bag manufacturers and other stakeholders to identify the appropriate roles for trash bag manufactures in the MOUs, but Board staff does not envision a separate MOU for trash bags.

Report Changes: The comment is appreciated and noted. No change to the report is required.

Reference: 4 and 11

**Plastic Trash Bag Legislative Report
2nd 30 Day Comment Review List of Companies and Representatives
December 17th-January 21st**

	Company	Representative	Address
1	California Cotton Ginners & Growers Association	Roger A. Isom	1941 N. Gateway Blvd., Suite 101 Fresno, CA 93727
2	Poly-America, L.P. The Clorox Company	Pete Price, Laurie Nelson	1029 K Street, Suite 38 Sacramento, CA 95814
3	CA Grape & Tree Fruit League	Rob Neenan	1540 E. Shaw Avenue, Suite 120 Fresno, CA 93710
4	The Clorox Company	Victoria Jones	P.O. Box 24305 Oakland, CA 94623
5	Tyco Plastics & Adhesives	Mike Jackelen	1401 West 94th Street Minneapolis, MN 55431
6	CA Film Extruders & Converters Association	Cathy Browne	2402 Vista Nobleza Newport Beach, CA 92660
7	Film & Bag Federation	Michael Vatuna	1667 K. Street N.W. Suite 1000 Washington, DC, 2006
8	CA Bag & Film Alliance	Frank Ruiz	1029 J Street, Suite 300 Sacramento, CA 95814
9	National Paint & Coatings Association	Heidi K. McAuliffe	1500 Rhode Island Avenue, NW Washington, DC 20005
10	APC-ACC	Tim Shestek	1121 L street, Suite 910 Sacramento, CA 95814
11	Poly-America	George M. Hall	2000 West Marshall Dr. Grand Prairie, TX 75051
12	CAW	Scott Smithline	926 J Street, Suite 606 Sacramento, CA 95814
13	PACTIV	Elizabeth Cunningham	1900 West Field Court Lake Forest, Illinois 60045
14	Illinois Tool Works Inc.	Michael J. Lynch	3600 West Lake Avenue Glenview, IL 60025
15	California Compost Coalition	Neil Edgar	1822 21st Street Sacramento, CA 95814