

STATE OF CALIFORNIA

CALRECYCLE

PUBLIC MEETING

JOE SERNA, JR. BUILDING

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

CAL/EPA BUILDING, BYRON SHER AUDITORIUM

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SACRAMENTO, CALIFORNIA 95814

TUESDAY, JANUARY 17, 2012

10:00 A.M.

Reported by:
Peter Petty

APPEARANCES

CAL RECYCLE STAFF

Mr. Caroll Mortensen, Director
Mr. Howard Levenson, Deputy Director
Ms. Kathy Frevert
Ms. Cynthia Dunn
Ms. Cara Morgan
Mr. Trevor O'Shaughnessy
Mr. Robert Holmes
Ms. Kathy Marsh
Mr. Neal Johnson
Ms. Lorraine Van Kekerix

Public Comment

Teresa Bui, Californians Against Waste
Heidi Sanborn, California Product Stewardship Council
George Larson, Waste Management, Illinois Toolworks
Gene Livingston, Greenberg Traurig for the American
Coatings Association
Nick Lapis, Californians Against Waste
Chuck Helget, Republic Services
Brenda Coleman, CA Chamber of Commerce
John Cupps, Los Angeles County Sanitation Districts
Mark Bowers, City of Sunnyvale
Mary Pitto, Regional Council of Rural Counties
Randy Pollack, Plastics Institute
Tim Shestek, American Chemistry Council
Bob Houston, The Houston Group
Mark Murray, Californians Against Waste

*Highlight indicates those attendees providing public comments regarding the Agenda Item 4: "Adoption of Negative Declaration and Proposed Adoption of Revision to the Rigid Plastic Packaging Container (RPPC) Regulation"

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1 P R O C E E D I N G S

2 JANUARY 17, 2012

10:55 a.m.

3

4 (Off the record at 12:19 p.m.)

5 (Back on the record at 12:33 p.m.)

6 **ITEM 4. RPPC NEG DEC**

7 DIRECTOR MORTENSEN: Let's keep moving. We are
8 now on Item 4 in the rulemaking part of the agenda and
9 this is the Direct Package on the Neg Dec regarding the
10 Rigid Plastic Packaging Container Program. And, staff,
11 take it away.

12 SECTION MANAGER O'SHAUGHNESSY: Thank you,
13 Caroll. Good morning – or actually good afternoon,
14 apologies. My name is Trevor O'Shaughnessy of the
15 Jurisdiction Minimum Content and Tire Compliance Section.

16 Today staff is presenting two Items related to
17 the Rigid Plastic Packaging Container or RPPC rulemaking.
18 The first is the Adoption of the Negative Declaration for
19 the Revision of the RPPC Regulations. The second is the
20 adoption of the Revisions to the RPPC Program
21 Regulations. We will begin our presentation with Robert
22 Holmes. Mr. Holmes will provide an overview of staff's
23 efforts to complete the CEQA requirements. Following the
24 CEQA review, a background of staff's efforts to date to
25 revise the regulations will be provided.

1 Staff is requesting that any comments be held
2 until the conclusion of staff's presentation. Staff also
3 would like to request that any speaker identify the
4 specific section or subsection of the regulations that
5 they are addressing. At this time I'd like to turn the
6 presentation over to Mr. Holmes.

7 SENIOR INTEGRATED WASTE MANAGEMENT SPECIALIST
8 HOLMES: Good afternoon, everyone. Slide 2. Staff
9 completed an initial study of the potential environmental
10 effects of the proposed rulemaking. And as a result of
11 that study, determined that the regulations will not have
12 a significant effect on the environment and, in so,
13 prepared a negative declaration under CEQA. Slide 3.

14 A notice of intent to adopt the negative
15 declaration was distributed to interested parties, the
16 mailing list for the rulemaking, essentially, and was
17 publicized in three papers of general circulation
18 throughout the state.

19 The negative declaration was also submitted to
20 the State Clearinghouse for distribution to other state
21 agencies. The comment period for the negative
22 declaration ran from November 4 - December 5. Slide 4,
23 please.

24 We received one comment letter during the
25 public comment period, and the comment letter essentially

1 agreed with staff's analysis of the proposed
2 environmental effects and urges CalRecycle to adopt the
3 negative declaration. Slide 5.

4 And with that, it was staff's recommendation to
5 adopt the negative declaration and the initial study and
6 to file a notice of determination with the State
7 Clearinghouse. Thank you. And with that, I'll turn it
8 back over to Trevor.

9 SECTION MANAGER O'SHAUGHNESSY: Thank you, Bob.
10 The Rigid Plastic Packaging Container Act of 1991 took
11 effect on January 1, 1992. The intent of the law is to
12 spur markets for plastic materials collected for
13 recycling by requiring manufacturers to utilize increased
14 amounts of postconsumer material in the Rigid Plastic
15 Packaging Containers. As directed in the law,
16 regulations were adopted by the California Integrated
17 Waste Management Board, the predecessor to CalRecycle, on
18 July 1, 1994 and became effective January 1, 1995.

19 The law requires that every Rigid Plastic
20 Packaging Container sold, or offered for sale in
21 California, on average, must meet one of the following
22 criteria: Be made from 25 percent postconsumer material,
23 have a recycling rate of 45 percent if it is a product
24 associated RPPC or a single resin type of RPPC, be a
25 reusable or refillable RPPC via source reduced RPPC, via

1 container containing floral preservative that is
2 subsequently reused by the floral industry for at least
3 two years. Additional compliance options were provided
4 through the passage of statutory changes in 2005 and
5 2006. These options allow product manufacturers under
6 the same corporate ownership to meet the 25 percent
7 recycled content compliance option through the use of
8 California plastic postconsumer material or PCM in other
9 products and packaging.

10 During 2007 staff conducted a series of
11 informal rulemaking advisory committee meetings and
12 workshops. Staff analyzed and considered the information
13 provided to develop the proposed regulations, which were
14 presented to the CIWMB at the November 2007 Committee
15 Meeting. At that time, the CIWMB Committee requested
16 changes and directed staff to begin the formal rulemaking
17 process.

18 The program has conducted 5 certification
19 cycles based on experience in conducting these
20 certifications and in taking enforcement actions, it
21 became clear that there were inconsistencies in equities,
22 complexities, as well as outdated provisions in the
23 current regulations.

24 Additionally, with the passage of the various
25 bills, the current regulations are outdated and do not

1 reflect the law. Another indication of the need for the
2 rulemaking is the necessity for more clarity in the
3 regulations. Significant staff resources have been spent
4 during compliance certifications helping the regulated
5 community understand the existing regulations.

6 The existing regulations have excess verbiage
7 and a hard to follow format. Many of the regulatory
8 definitions could be clarified for easier application.
9 The proposed revisions to the RPPC Regulations provide a
10 clarity and organization which has been requested by
11 stakeholders, and they also provide direction for the new
12 compliance options.

13 The rulemaking timeline included the following:
14 As previously noted, staff made a presentation to the
15 CIWMB at the November 2000 Committee Meeting and
16 requested approval to move forward with the formal
17 rulemaking based on revisions developed. Following the
18 November 2000 direction, staff initiated the economic and
19 fiscal impact study by mailing surveys to container and
20 product manufacturers and plastic reproducers to gather
21 information on economic impacts due to the changes in the
22 RPPC Regulations. The study will be discussed in more
23 detail later.

24 The rulemaking package was sent to the Office
25 of Administrative Law and a 45-Day public comment period

1 ran from February 11 - March 28, 2011. At the conclusion
2 of the comment period and on April 8, 2011 staff held a
3 public hearing. Following staff's analysis of the
4 comments and other available information, extensive
5 revisions were made to the regulations. So a second 45-
6 Day public comment period was conducted from July 28 -
7 September 15, 2011. There were some additional
8 revisions, so a 15-Day public comment period was
9 conducted from October 31 - November 15, 2011. Workshops
10 were held on May 17, June 8, June 22 and October 5. The
11 Workshops provided staff an opportunity to discuss the
12 significant issues, the interests the parties had, and
13 allowed staff to capture all comments and concerns.

14 The key revisions that were - are proposed
15 within the regulations include the regulation revisions -
16 excuse me. The regulation revisions included extensive
17 reformatting; however, only a portion of the revisions
18 were controversial. The major topics that generated the
19 most discussion during the rulemaking process included
20 the proposed revised definitions, container requirements
21 and alternative container compliance method, compliance
22 certifications and product and container manufacturer
23 certifications. Additional topics generated discussions
24 were waiver and exemptions, auditing proprietary,
25 confidential or trade secret information and record

1 retention, advisory opinions and violations and
2 penalties. Having provided that overview of the
3 rulemaking, I would now like to introduce Kathy Marsh to
4 present the topics that generated the most discussion
5 during the rulemaking process.

6 SUPERVISING INTEGRATED WASTE MANAGEMENT

7 SPECIALIST MARSH: Thank you, Trevor. Throughout the
8 rulemaking process there was significant discussion of
9 definitions since they set the framework for the entire
10 regulations package. The defined terms that stakeholders
11 expressed the most concern over included material type,
12 postconsumer material, reusable container, rigid plastic
13 packaging container and source reduction. I would like
14 to briefly overview the concerns raised during the
15 rulemaking.

16 For material type, product and container
17 manufacturers said that the current definition is
18 confusing. This is due in part to the current
19 definition's focus on very broad feedstock categories of
20 paper, glass, plastic and aluminum. The existing
21 language also specifically excludes individual plastic
22 resins from the definition. The current focus on these
23 broad feedstock categories is not consistent with this
24 law about plastic packaging. Material type is used in
25 the definition of source reduced container and will be

1 further discussed later.

2 For postconsumer material, some product and
3 container manufacturer representatives said there will be
4 negative impacts if post-industrial material no longer is
5 counted as postconsumer material and could no longer be
6 used to meet the most commonly used compliance option
7 which is 25 percent postconsumer material or PCM.

8 Through the rulemaking process, staff worked to
9 gain a general consensus between the plastics industry,
10 environmentalists, plastic collectors and reprocessors.
11 The proposed definition of PCM has been refined to
12 clarify that obsolete or unsold products that are
13 commonly disposed, not reused, shall be considered PCM
14 when used as feedstock for new RPPCs.

15 Additionally, rejected finished plastic
16 packaging that has been commonly disposed and not reused
17 in the original manufacturing and fabrication process may
18 be considered postconsumer material. However, materials
19 and byproducts generated from and commonly reused within
20 an original manufacturing and fabrication process are not
21 considered postconsumer material, PCM. The development
22 that this compromise reduced the number of concerns. The
23 reusable container definition has been clarified to
24 address past confusion about the intended reusability.
25 The proposed definition clarifies that the reuse may

1 include holding a replacement product sold by the same
2 company and intended to be used to replenish the contents
3 of the RPPC at least 5 times. For an example, a consumer
4 buying a large replacement jug of liquid hand soap to
5 replenish, thus reuse the dispenser, the product first
6 came in, at least 5 times.

7 There's been concern by industry that the draft
8 regulations proposed to change the definition of reuse to
9 exclude containers that stored the original product sold
10 in the container. Staff found that the proposed changes
11 in this definition are consistent with Public Resources
12 Code 42301 (d), "A container simply used to permanently
13 store their original product is not considered reusable
14 for purposes of this compliance option."

15 The definition of Rigid Plastic Packaging
16 Container or RPPC received significant comments
17 throughout the rulemaking process. Some product
18 manufacturer representatives and some container
19 manufacturers say that to add millions of additional
20 containers including heat sealed clamshells and
21 containers not made entirely of plastic goes against the
22 legislative intent to have a program that is manageable
23 to implement.

24 Additionally, product manufacturers said it
25 would take up to 5 years for them to make changes to

1 comply. RPPCs that are of concern include clamshells
2 that are heat sealed during the product packaging
3 process, plastic buckets with metal handles or squeeze
4 tubes that have to be cut open rather than having a
5 screw-top lid. Currently, these containers are not
6 considered RPPCs. Yet, clamshells that can open multiple
7 times, plastic buckets with plastic handles or squeeze
8 tubes that do have screw-top lids are considered RPPC.

9 This creates an inequitable regulatory
10 treatment of virtually identical containers. The revised
11 regulation creates a more level playing field while
12 setting the same standards for almost identical
13 containers. The almost identical containers have the
14 same landfill disposal impacts and capacity for being
15 source reduced or made of PCM, or postconsumer material,
16 but have a slightly different design.

17 Another concern about this definition is the
18 need to further define an RPPC's flexibility. The
19 regulations proposed to use the American Society for
20 Testing Materials, or ASTM, D6988.8 guidelines for film
21 plastic. Using these guidelines will give staff an
22 industry accepted standard to use to determine what is
23 and is not flexible.

24 The definition for source reduced container is
25 the one with the greatest amount of comments throughout

1 the entire rulemaking process. Source reduction allows
2 product manufacturers to meet compliance by decreasing
3 the RPPC rate or concentrating a product or both by 10
4 percent. The existing regulations did not prohibit
5 product manufacturers to claim compliance by resin
6 switching. This portion of the source reduction
7 compliance option has been eliminated in the revised
8 regulations by revising the definition of material type
9 to include individual resin types to be consistent with
10 the statutes. It should be noted that nothing in the
11 proposed regulations prohibits product manufacturers from
12 electing to switch resins for weight or cost reasons;
13 however, they do prohibit resin switching as a compliance
14 option.

15 The elimination of the allowance of resin
16 switching is an option to comply with the source
17 reduction compliance option – as an option to comply with
18 the source reduction compliance option created a large
19 volume of comments both pro and con. Staff was provided
20 several different reports from various points of view on
21 the issue. The three greatest concerns were the
22 increased amount of greenhouse gas for both using only
23 virgin; and using postconsumer material, whether or not
24 there was enough postconsumer material resin available;
25 and whether the elimination of the resin switching

1 allowance would prevent industry from advancing new
2 technology.

3 Staff conducted an independent analysis for the
4 first concern, greenhouse gas, in the negative
5 declaration for the California Environmental Quality Act.
6 The analysis concluded that using postconsumer resin will
7 reduce the amount of carbon dioxide equivalence in
8 avoiding greenhouse gas emissions either by directly
9 reducing the amount of virgin resin used to manufacture
10 containers or by substituting virgin resin with its PCM
11 counterpart.

12 Regarding availability of resins, the economic
13 impact study and the negative declaration both found that
14 over 100 million pounds of resin is used for all the
15 impacted containers. According to the CalRecycle 2010
16 beverage container sales and recycling data for
17 California only, there are 426.5 million pounds of resin
18 available for containers manufacturers. This would be
19 more than enough to meet the 25 percent postconsumer
20 mandate. Based on the Department's waste management
21 experience and comments received from plastic recyclers,
22 processors and allowing manufacturer compliance through
23 resin switching will reduce the availability of
24 postconsumer material and have an adverse effect on
25 recycling of RPPCs, as well as further reduce the amount

1 of postconsumer material available for other
2 manufacturers to demonstrate compliance.

3 Without recycling opportunities, the increased
4 amounts of the number 3 PVC through number 7 (all other
5 resins) will mean more RPPCs being disposed in
6 California's landfills or exported out of California and
7 the United States.

8 As far as proposed new definitions, based on
9 feedback from stakeholders, staff drafted new definitions
10 for terms commonly used in the program. These include
11 concentrated product, container line, product line and
12 product subline. The container requirements section
13 provides the 5 different compliance options in which
14 those product manufacturers that place their product
15 within RPPCs must comply. This section also explains how
16 product manufacturers may achieve compliance based on
17 averaging.

18 This section proved to be of concern with a few
19 interested parties but is based on Public Resources Code
20 42310 and cannot be modified to allow companies to obtain
21 credit for PCM used in other company's products when the
22 two companies are not under the same corporate ownership.

23 The alternative container compliance method is
24 a new section which details how to comply over or under
25 the alternative container compliance method based on

1 Public Resources Code 42310.3. The proposed regulations
2 mirror the statutory provision which allows a product
3 manufacturer to demonstrate compliance through its
4 actions or the actions of another company under the same
5 corporate ownership. No comments requested changes to
6 this section.

7 The proposed regulations include a
8 precertification process. Staff developed this process
9 in response to stakeholder's concerns about adequate time
10 to prepare and compile data for certification.
11 Currently, existing regulations give product
12 manufacturers a six month's advance notice before
13 certifications are due. During the precertification
14 period CalRecycle will send a notice to a selected group
15 of product manufacturers one year before the measurement
16 period and two years before the certification would be
17 due.

18 The notice will let the product manufacturer
19 know that they may be randomly selected to certify for
20 specific certification cycle. When a product
21 manufacturer is selected to certify, CalRecycle will send
22 a notice one year before the certification itself is due.

23 Product and container manufacturers found the
24 certification process confusing since information is
25 spread throughout the current regulations. The proposed

1 revisions consolidate the requirements. The product
2 manufacturer certification information section has
3 consolidated all of the product manufacturer
4 certification requirements for all compliance options,
5 making the revised regulations easier to follow. The
6 container manufacturer certification information section
7 has consolidated the information container manufacturers
8 must include in their certifications to product
9 manufacturers, thus providing clearer direction on
10 requirements for all container certifications. Few
11 comments were received on these sections.

12 For the compliance calculations and formulas
13 section, product and container manufacturers found the
14 current regulatory compliance and calculation formulas to
15 be confusing. To address this, staff separated the
16 compliance calculations and formulas from other
17 requirements and reorganized them so that the compliance
18 formulas are organized by option with formulas updated
19 for clarity.

20 The product manufacturers will use these
21 formulas to determine their compliance with specific
22 compliance options and the Department will use the
23 formulas to verify the calculations. Very few comments
24 were received for this section.

25 The waivers section has been added and

1 replaces, in part, information contained in the current
2 regulations. In response to comments, staff revised the
3 section to specify when petitions for waivers should be
4 submitted during the certification process. Stakeholders
5 said the requirements for the exempt RPPC section were
6 unnecessary since products such as food, medical food or
7 devices and drugs are already statutorily exempt. Staff
8 amended the section to require product manufacturers to
9 submit documentation as to the reason it is claiming any
10 exemption for its RPPC, but not a certification.

11 The Department has developed standard practices
12 for audits, proprietary, confidential or trade secret
13 information and records retention. The existing
14 regulations were modified to include Department
15 standards. There were few comments on these sections.

16 The Advisory opinions process was developed in
17 response to stakeholder questions and concerns. The
18 section replaces a one sentence statement in the current
19 regulations regarding when and how the Department will
20 make determinations as to whether a specific container
21 meets the definition of an RPPC. Product manufacturers
22 may request advisory opinions early in the
23 precertification and certification process so that they
24 will not have to provide any further information if it is
25 not an RPPC.

1 The section specifies that only those product
2 manufacturers that received a precertification or a
3 certification notice may request an opinion.

4 And, finally, the violations and penalties
5 section has been developed to address product
6 manufacturers' concerns that the current methodology for
7 calculating a penalty amount is confusing. The section
8 clarifies the formulas used to determine the degree of
9 noncompliance and applicable penalties. Additionally,
10 this section clarifies that if a container manufacturer
11 provides false or misleading information on its
12 certification to the product manufacturer, the container
13 manufacturer will be subject to the fines and penalties
14 and the product manufacturer will not.

15 The total penalty is still weighted by
16 container line but the formulas are more clearly
17 displayed in symbols and with the symbols defined so
18 product manufacturers can see the process the Department
19 will use to assess penalties, thus adding transparency to
20 program implementation. Very few comments were received
21 on this section.

22 That all said, now I would like to hand over
23 the presentation to Neal Johnson. He will present
24 information on the economic and fiscal impact study.
25 Neal?

1 RESEARCH ANALYST JOHNSON: Thank you. The
2 economic and fiscal impact study was started in October
3 2008. The study was initiated to comply with the
4 requirements of the California Government Code Section
5 11346.3 (a). That law, which applies to all state
6 agencies, required the Department, prior to submitting
7 any amended regulations to the Office of Administrative
8 Law, to conduct an economic analysis of the proposed
9 regulations impact on California businesses and
10 individuals.

11 In the analysis, the Department must consider
12 what industries are effected, how those industries and
13 businesses within it will be effected, the ability of
14 California businesses to compete with businesses in other
15 states and the impact on small businesses. For the
16 purposes of evaluating the impacts on the ability of
17 California businesses to compete, the Department shall
18 consider, but not be limited to, information supplied by
19 interested parties.

20 In, as I said, in 2008, we started the process
21 with what we viewed as a very statistically reliable
22 sampling of approximately 1,500 container manufacturers,
23 product manufacturers, plastic recyclers, plastic
24 brokers, reproprocessors and other stakeholders.
25 Unfortunately, there was a very low response rate to the

1 survey during the period of October-November 2008. And
2 that made it very difficult, if not impossible, to really
3 draw conclusions regarding the cost impacts, the revised
4 regulations, and the magnitude of those impacts could not
5 be relied upon. Therefore, the Department had to take a
6 different approach to the study. That modified approach
7 started from looking at the amount of RPPCs that are
8 generated in California.

9 The Department, the then Integrated Waste
10 Management Board, conducted periodic waste
11 characterization studies. In the 2003-04 study we broke
12 the plastic container group into 15 subcategories of
13 RPPCs. Also, the Department used to, prior to
14 abolishment or repeal by the legislature in 2004, would
15 do an annual PET and all container recycling rate
16 studies. So we had data on the amount of RPPCs being
17 disposed of and the amount of RPPCs being recycled which
18 gave us the amount of RPPCs being used in California.

19 We also related that data to the then Division
20 of Recycling's CRV Recycling Sales and Redemption
21 Recycling data. We looked at the 5 certifications of
22 RPPC manufacturers between 1996 and 2005. And then a
23 number of other data sources including, particularly, the
24 U.S. Department of Commerce's Census of U.S.
25 manufacturing.

1 We also looked at data provided by the American
2 Chemistry Council on resin production and sales in
3 recycling, resin pricing, particularly drawing from
4 *Plastics News*, IDES.com and some others on both virgin
5 and recycled resin prices.

6 We also talked with a number of the survey
7 respondents who had provided data sometimes either to get
8 clarification or to understand whether what we're seeing
9 in the survey responses fit what conclusions we were
10 drawing from the study. We also looked at publications
11 of the Internal Revenue Service, particularly looking at
12 asset lives of capital equipment and then some other
13 sources for profit margins, etc. because as said earlier,
14 part of the analysis is not just the impact on the
15 producers but the impact on the users.

16 We also worked with the California Air
17 Resources Board's Economic Studies Section to obtain a
18 independent valuation of verification of the study
19 methodology in the results, and whether those results
20 were really representative of the impact on the regulated
21 community.

22 Finally, in December 2010, the California
23 Department of Finance, which is the final step in the
24 process, approved the Economic Fiscal Impact Study.

25 The results of the study found that the 5

1 proposed revisions, which would impact approximately 673
2 million containers, which is about 17 percent of the 3.94
3 billion RPPCs that are regulated by the law. There are
4 another about 3.3 million RPPCs that Kathy earlier had
5 indicated are exempt from manufacturer compliance
6 requirements. The 5 areas of impact were: one is the
7 change of the no exclusion from the definition of RPPCs
8 for containers with buckets, tubs, pails, clamshells,
9 etc. that were otherwise similar, except for maybe a
10 metal handle or heat sealing clamshell, to other
11 containers that have to comply; that post-industrial
12 material can no longer be counted as postconsumer
13 material in compliance calculations; resin switching will
14 no longer be allowed as a method to achieve compliance
15 for source reduction; and product manufacturers under the
16 same corporate ownership can demonstrate compliance
17 through the use of California generated postconsumer
18 material and other products they produce; and, then
19 finally, what was the increased cost of record keeping,
20 including time retention. And record keeping is one of
21 the areas that is specifically required by all agencies
22 to identify in the economic impact- not just this study.

23 The staff determined overall that there would
24 be about a \$3.5 billion - or \$3.5 million, excuse me,
25 annual impact on all users of RPPCs, both business and

1 residents, and that the overall impact would be just over
2 a \$0.005 per impacted container, which we view as a
3 fairly minor impact.

4 Thank you.

5 SECTION MANAGER O'SHAUGHNESSY: Thank you,
6 Kathy and Neal, for your presentations. CalRecycle staff
7 gave careful consideration to all comments received
8 throughout the rulemaking process. After reviewing the
9 comments from the 15-Day comment period, staff identified
10 some grammatical and punctuation clean up necessary for
11 continuity. These edits have been ID'd in the final
12 draft of the proposed regulation revisions and are posted
13 on CalRecycle's website.

14 As previously heard, staff evaluated the
15 potential environmental effects of the proposed
16 regulations as required by CEQA and determined that a
17 negative declaration was the appropriate document. I
18 would like to note that staff received written comments
19 from Talco Plastics and CarbonLite supporting the
20 regulations. One written comment of opposition was
21 received from Klochner – K-L-O –

22 INTEGRATED WASTE PROGRAM MANAGER VAN KEKERIX:
23 From Patty Enneking at Klochner – and I don't remember –

24 SECTION MANAGER O'SHAUGHNESSY: Pentaplastics.
25 I apologize for that mispronunciation. Staff would like

1 to remind the Director that action on the negative
2 declaration and initial study must be made prior to
3 reaching a decision on the proposed regulatory revisions.
4 Therefore, staff recommends adoption of the negative
5 declaration and initial study conducted for CEQA and that
6 staff be directed to file a notice of determination with
7 the State Clearinghouse as provided under CEQA. Staff
8 further recommends adoption of the proposed revisions to
9 the Rigid Plastic Packaging Container regulations so that
10 the rulemaking package may be forwarded to the Office of
11 Administrative Law for approval. After approval of the
12 regulations by the Executive Director, staff will prepare
13 and submit the final rulemaking package to OAL by
14 February 13, 2012.

15 Before I conclude I would like to thank
16 Georgianna Pfof, Karen Denz and our presenters for all
17 their efforts that they've put into the rulemaking.
18 Additionally, I would like to thank Wendy Harmon, Jim
19 Hill, Clark Williams for their support in conducting the
20 Greenhouse Gas Analysis. If it was not for their efforts
21 we would not have been able to make this final
22 presentation for approval of this package. This
23 concludes staff's presentation.

24 INTEGRATED WASTE PROGRAM MANAGER VAN KEKERIX:
25 I'd like to add one more thank you in there and that is

1 the original staff from 2007 that got this started and
2 included many of the changes that we're discussing today.

3 DIRECTOR MORTENSEN: All right. Thank you,
4 staff, for bringing us up to date on this process. I
5 appreciate that. So comments and questions from the
6 audience, stakeholders. Mr. Pollack?

7 MR. POLLACK: Thank you, Director Mortensen.
8 Randy Pollack, on behalf of the Plastic Shipping
9 Container Institute. The Institute represents over 90
10 percent of the manufacturer and distribution plastics
11 shipping containers in the United States, Canada and
12 Mexico. These pails bring foods to restaurants and the
13 home, safely handles cleaners for building maintenance,
14 bring paint and wall joint compound to the construction
15 sites, along with many other uses.

16 We are here today opposing the change to
17 Section 17943 (f) that would prohibit the use of resin
18 switching for source reduction.

19 The elimination of resin switching as a means
20 of source reduction will make it very difficult, if not
21 impossible, for pail manufacturers to comply with the
22 rigid packaging container law. The reason is is that
23 postconsumer resin, PCR, is not an option for most pail
24 manufacturers. In the past, presentations to staff and
25 the former California Integrated Waste Management Board

1 demonstrated that it is very difficult for pails to use
2 25 percent injected grade PCR, as it significantly
3 reduces the strength of the container and has the
4 potential to decrease stress cracking resistance by 20-40
5 percent.

6 Additionally, even assuming that 25 percent PCR
7 could be used, the incorporation of 25 percent blow-
8 molding PCR is not possible with many of the
9 manufacturers today with today's equipment. Millions of
10 dollars would have to be spent on equipment that would
11 eventually produce pails that would not withstand the
12 strength and stress testing that's required to ship these
13 products.

14 For over 5 years, PSCI has continued to meet
15 with staff to discuss the issue of resin switching. In
16 2007, staff, in a response to comments to revising the
17 regulations, stated in regards to source reduction, "the
18 definition of source reduced container in Public
19 Resources Code Section 42301 (j) specifically allows the
20 switching of resin types as long as the change does not
21 adversely affect the potential for the containers to be
22 recycled or made of PCM. Prohibiting the use of
23 different resin types would not be authorized by the
24 governing statute." This is what makes the current
25 proposal so troubling.

1 Also, I would like to make clear that while
2 there is a lot of discussion regarding the availability
3 of PCR, the vast majority of PCR comes from bottles,
4 which is not the same resin that must be used in
5 injection molded shipping containers. Information has
6 been provided to the Department that not enough PCR even
7 exists to meet the requirement under the revised
8 regulations. Additionally, I would also like to raise
9 another point regarding the regulations and an additional
10 354 million containers that will be added to the program.

11 As I have mentioned in almost every meeting and
12 hearing on these revised regulations, I have urged the
13 Department to review prior certifications to determine
14 whether changes and containers added to this program make
15 sense. To date, I don't believe this review has ever
16 been undertaken.

17 I also want to talk about the economic impact
18 on these regulations. As Neal discussed, the survey
19 results were very few. Approximately 42 manufacturers or
20 processors actually returned information in which
21 information was gathered. So based upon this, we are
22 making a decision that's going to increase the number of
23 manufacturers to this program by thousands of companies.
24 To say that only a \$2 million impact to the consumers of
25 California is going to occur, then the companies cannot

1 withstand any sort of scrutiny.

2 I can tell you that the small businesses that
3 are out there that are not subject to this law right now,
4 by the time that they have to do record keeping, contact
5 their suppliers, they have to maybe break contracts with
6 their suppliers because they are only buying certain
7 resin from a certain resin supplier that they cannot
8 change at this current time.

9 What we're going to do is, you're going to
10 impose a significant burden on all these companies,
11 especially small ones who are really the engine of our
12 economy, especially in today's time in California where
13 we have 11.5 percent unemployment. Where the Governor
14 has come out and stated through Executive Orders that we
15 should look at how we should revise and review
16 regulations to ensure that businesses can flourish
17 here.

18 I can guarantee that by the passage of these
19 revised regulations you'll have many small businesses who
20 ship into California who will stop doing that. And you
21 may say, "That's great, we'll rely on California
22 companies." Unfortunately, a lot of those California
23 companies are leaving because of this. You have to
24 remember with small businesses, they have distributors,
25 even if they're from out of state, that go and sell

1 things within the state and now we're going to take away
2 another opportunity from them to conduct business.

3 So for these reasons, that we would request
4 that further discussions of these regulations should take
5 place, until we can sit down and really analyze the best
6 way to get this program working. Thank you.

7 DIRECTOR MORTENSEN: Thank you, Randy. Next?
8 Mr. Larson? Oh. Mr. Shestek. That's fine.

9 MR. SHESTEK: Thank you, Director Mortensen.
10 Tim Shestek with the American Chemistry Council. I will
11 associate myself with the comments that Mr. Pollack
12 previously made. We still have a couple of outstanding
13 issues with the proposed regulations and let me just
14 highlight a couple of things.

15 On the resin switching issue, I noted in
16 staff's response to comments that continued allowance of
17 this compliance option would have a negative impact on
18 recycling. We spent a lot of time providing data to
19 CalRecycle and staff that, I think, clearly demonstrates
20 a tremendous growth in not only the collection
21 infrastructure for non-bottle rigid containers but also
22 the amount of material that's being recovered through
23 those programs. So given that this compliance option has
24 been a part of the regulations since its inception I
25 still continue to struggle with the rationale that

1 continued allowance is going to have negative impact on
2 recycling given what we've seen in terms of, as I
3 mentioned earlier, the growth in collection
4 infrastructure and the material that's being collected.
5 So it just doesn't seem to connect for me in terms of
6 that particular response to the concern that we raised.

7 So we would, again, encourage the regulations
8 to allow for companies to switch from one resin to the
9 other and demonstrate compliance. Certainly we're not
10 interested in seeing someone switch container types and
11 have a detrimental impact on recycling. I think we could
12 be in agreement in that comment, but I don't think that
13 would be the case given the data that we did provide.

14 The other issue that Mr. Pollack raised was the
15 availability of PCR. It appears to me that the
16 regulations as drafted do not allow for any sort of
17 waiver provision should a company experience a reality
18 that they may not be able to comply, either through the
19 source reduction option or through availability of
20 suitable postconsumer material. So it seems to me that
21 the regulations ought to have some sort of mechanism by
22 which consumer product companies could petition
23 CalRecycle, in the event that they may not be in a
24 position to demonstrate compliance. That appears to be
25 absent from the current regulations that are being

1 proposed.

2 We had a couple of other items that we would
3 consider the Board – excuse me, consider CalRecycle take
4 under consideration that we noted in our comments but I
5 think the two major ones, in terms of the ability to
6 demonstrate compliance through PCR and a need for some
7 sort of waiver provision, and then this resin switching
8 issue. Frankly, I think we provided enough information
9 that demonstrates that it would not have a detrimental
10 impact on recycling. It hasn't had a detrimental impact
11 on recycling since the regulations were adopted. And so
12 we would encourage the proposal to continue to allow for
13 that particular compliance option. Thank you.

14 DIRECTOR MORTENSEN: Thanks, Tim. Mr. Larson?

15 MR. LARSON: George Larson, representing
16 Illinois Tool Works. In earlier testimony discussing the
17 commercial recycling regulations, my dear friend and
18 colleague Chuck Helget used the word tortuous to describe
19 that process. I recommend that that word be exclusively
20 reserved for discussions of the RPPC Regulations.

21 Given the weakness of the underlying law and
22 the divisive nature of the history of this program,
23 Illinois Tool Work commends the staff of CalRecycle for
24 having opened up many opportunities for changes to these
25 regulations that make compliance at least practical.

1 Mr. O'Shaughnessy noted that the regulations –
2 excuse me, the law today, was January 1, 1992, which is
3 20 years and 17 days ago, and we're still here trying to
4 figure out this law. So that may be some indication that
5 there's only so much lipstick you can stick on the pig,
6 but this is as pretty as this one's going to get.

7 Some positive changes like precertification, I
8 think, provide very positive opportunities for the
9 regulated community because Illinois Tool Work, in
10 particular, was, if you will, caught in the broad net
11 that was tossed out to 3,000 companies at one point in
12 time, I forget the year but it might have been 2005, and
13 are required to make demonstrations of compliance with
14 the law for actions taken 2 years prior to being selected
15 for demonstrating compliance which, for most companies
16 large and small, going back 2 years to find out who you
17 bought a container from is an art not a science. So
18 notifying companies in advance is a good step.

19 Mostly, we felt, that we support the changes in
20 the postconsumer material definition. We feel it was a
21 compromise, but overarching compromise is the fact that
22 it accurately reflects the legislative clarification of
23 that definition that was contained in Senate Bill 1344,
24 incidentally authored by then Senator Chesbro, former
25 board member of your predecessor company. So,

1 recognizing there are still some issues that have been
2 legitimately expressed here today, for the purposes of
3 these regulations Illinois Tool Works supports their
4 adoption. Thank you.

5 DIRECTOR MORTENSEN: Thank you, Mr. Larson.
6 Mr. Houston?

7 MR. HOUSTON: Thank you. Bob Houston. I'm
8 here today to represent the Association of Postconsumer
9 Plastic Recyclers. My understanding is that their
10 membership contains all the state's large recyclers and
11 we're here to commend the staff today on a job well done.
12 And we absolutely support the adoption of these
13 regulations. Thank you.

14 DIRECTOR MORTENSEN: Thank you. Mr. Murray?

15 MR. MURRAY: Thank you, Madame Director. Mark
16 Murray with the environmental group California's Against
17 Waste. Apologize for our kind of disjointed
18 presentation; we've had 4 different people here. Had a
19 loss of Scott Smithline from our organization and it's
20 taken 4 of us to replace him this past month.

21 I have a specific - I want to make a specific
22 comment with regard to the resin switching issue and then
23 I have a general comment that I'd like to make with
24 regard to the program.

25 With regard to resin switching and with regard

1 to the dressing up of that pig some 20 years ago, I was
2 there when this law was enacted. This was a
3 substantially more ambitious law when it was first
4 enacted by the legislature in 1991. The non-food contact
5 plastic container was effectively the tail of that pig.
6 This was a policy that, at the time, covered all rigid
7 plastic containers including food and beverage
8 containers.

9 When that law was enacted, California had a
10 very weak recycling infrastructure. The bottle and can
11 recycling law was just coming into its own. Plastic
12 containers represented a relatively small fraction of
13 those containers and what was really needed, since we
14 were exporting virtually all of our plastic containers
15 overseas for recycling, was a market development program
16 and this was that market development program for all
17 plastic.

18 It was designed to drive manufacturers to
19 utilize this material, the things that we've been talking
20 about for 20 some years. And, unfortunately, this
21 legislation was compromised by the legislation in 1995 to
22 have the lion's share of those plastic containers
23 eliminated. And frankly this became the program that the
24 predecessor organization, that Integrated Waste
25 Management Board, loved to ignore. And when the initial

1 regulations were developed I think that the feeling was
2 maybe that there was so little processing and recycling
3 manufacturing infrastructure in the state that it was
4 okay if we cut a few corners with regard to the
5 interpretation of the statute.

6 We're very pleased that with these updated
7 regulations that we're finally conforming this program,
8 in terms of the regulations, to the actual statute.

9 The statute itself is not very complicated, and
10 the provisions of the statute are quite clear on this
11 question of resin switching with regard to qualifying as
12 a source produced container. The legislature, the
13 statute says, "substituting a different material type for
14 a material that previously constituted the principal
15 material of the container" doesn't count. You can't
16 swap one resin type for another resin type. Even if the
17 legislature allowed that authority to take place the
18 provision that says, "Packaging changes that adversely
19 affect the potential for rigid plastic packaging
20 containers to be recycled or made of postconsumer
21 material." That would make it null and void.

22 Anyone that is involved in recycling in
23 California knows that there is a substantial difference
24 between the recycling success stories that we have for
25 high density polyethylene and PET plastic in the state of

1 California versus polypropylene. There is no way, even
2 if the authority – if the legislature – if the statute
3 allowed resin switching, there is no way that you could
4 find that switching from high density polyethylene to
5 polypropylene did not have a negative impact on
6 recycling. By the testimony of the opponents of this,
7 they're complaining that there isn't a sufficient
8 recycling infrastructure for polypropylene containers.
9 By their own admission polypropylene could never qualify
10 because it's got such a crappy recycling infrastructure,
11 crapping recycling rate in the state of California. That
12 said, there's a tremendous need, so now that's my
13 specific with regard to that.

14 I was there when the statute was developed,
15 along with Proctor & Gamble and the predecessor
16 organization to the ACC, the Council for Solid Waste
17 Solutions, all supporting this legislation, going to the
18 legislature and supporting a substantially more ambitious
19 policy. So now we're finally, 20 years later, we're
20 implementing this policy.

21 Just a couple words in terms of why is this
22 important right now. Our recycling collection and
23 processing and manufacturing infrastructure in California
24 for plastic has finally caught up to this law. We now
25 have manufacturers of various plastic stuff in

1 California. We have well in excess of plastic
2 manufacturing capacity in the state of California – well
3 in excess of the amount of plastic that we're cycling.
4 We collect, as it was noted, we collect 450 million
5 pounds of beverage container plastic. There's lots of
6 non-beverage container plastic that we're collecting for
7 recycling.

8 When you think of that whole world of high
9 density polyethylene milk jugs are being collected for
10 recycling and they're not part of that beverage container
11 recycling law. So I think that the actual number in
12 terms of pounds of plastic that's being collected for
13 recycling in California is much closer to 750 million
14 pounds and yet 27 percent of that high density
15 polyethylene and 21 percent of that PET, that's what's
16 being utilized in California. The balance, three-
17 quarters of all of that plastic that we're collecting for
18 recycling in California, we're exporting overseas because
19 we don't have the processing capacity, we don't have the
20 end use demand for that material.

21 Now this is the – the reason that this law is
22 important, the reason that full implementation of this
23 policy is important, is that this is frankly the only
24 tool that we have to create market demand for all of that
25 plastic that we're recycling.

1 This is no longer a chicken and egg type of
2 issue. We're doing the collection. We have all that
3 material. We have the collection infrastructure. And we
4 have tremendous amount of processing capacity, growing
5 the processors in California. Growing the manufacturers
6 in California that are already in this business is how
7 we're going to, kind of, close the loop in terms of
8 plastic recycling.

9 So I apologize for going on but this is
10 important – it's maybe tortuous but this is really
11 important. This is one of the most important tools that
12 we have to close the loop on plastic recycling. Maybe
13 there needs to – after 20 years- maybe there needs to be
14 changes to the statute, but the way to handle that is not
15 to compromise the regulation and continue to fail to,
16 frankly, implement the statute. It's to go to the
17 legislature and say, "We need an update of this
18 legislation to reflect the economic reality."

19 We do believe that the full and honest
20 implementation of this law is going to be good for
21 California businesses because no other state does as good
22 a job as us, as California, at collecting plastic
23 containers for recycling. So we have a tremendous
24 capacity for utilizing this plastic – these plastic
25 containers, if we can create market demand. And we can

1 create that market demand by fully implementing and
2 enforcing the requirements of this RPPC law.

3 I want to compliment the staff, the two
4 generations of staff, that have worked on this particular
5 issue. The 2007 staff and the staff today in terms of
6 their thoughtfulness and, frankly, their patience in
7 sticking with this policy because I think they realize in
8 their hearts that this was, in fact, an important policy.
9 So we're looking forward to full implementation and full
10 enforcement of this law. If there needs to be structural
11 changes in the statute, the place to do that is in the
12 legislature, not by compromising the regulation. Thanks
13 a lot.

14 DIRECTOR MORTENSEN: Thank you. Staff, any
15 wrap up comments? Nope. We have one more? I'm sorry.
16 Oh, sorry, Brenda.

17 MS. COLEMAN: I'll be very brief because I know
18 it's been a long morning. But I just - Brenda Coleman
19 with the California Chamber of Commerce. I just wanted
20 to associate my comments with those expressed previously
21 by Mr. Pollack. And as a membership that is comprised of
22 75 percent small businesses, we are deeply concerned with
23 the potential impact that will be trickled down to the
24 small businesses and ultimately to the consumers as a
25 result of the regulations. And half a cent per container

1 may appear nominal but when added with some of the other
2 rules and regulations that other companies are having to
3 deal with, for example some of the AB 32 measures, it
4 adds up to a lot. So we ask that you take these economic
5 impacts into consideration before moving forward with the
6 regulations. So, thank you.

7 DIRECTOR MORTENSEN: All right.

8 INTEGRATED WASTE PROGRAM MANAGER VAN KEKERIX:
9 I'd like to make one last comment. We've received a lot
10 of information from many of the stakeholders and we've
11 done our best job to go over that and analyze it and
12 reflect what we're required to do in terms of California
13 law and containers that are coming into California.
14 Thank you.

15 DIRECTOR MORTENSEN: All right. Thank you.
16 Thank you, everyone. This is a long time coming, these
17 regulations. Again, I think I - I don't know what
18 barnyard animal I will associate my comments with - the
19 tail of the pig or the chicken and the egg or what end of
20 the pig. But I think that these are a long time coming.
21 I think they address some of the statutory, kind of,
22 misinterpretations I think that we, kind of, got off on a
23 bit of a wrong foot with this law with the resin
24 switching issue.

25 But I think these are a way to get us moving

1 forward and try to bring this program up to date.
2 Although, I do agree with Mr. Murray. Although, I might
3 take it a bit further in that do I think that this
4 adequately addresses the world of plastics as we know it?
5 I don't think so. I think that we can be a lot more
6 efficient. We can bring a lot more plastics in. We can
7 be - I think more - that would allow us a lot more
8 flexibility with compliance and different creative ideas
9 to try to get more plastic recycled in the state.

10 So, with that, I have a procedure here, right?
11 I have to do one thing first before I do the other thing?
12 I have to - we have to approve the negative dec and then
13 direct staff to go forward with the regulations as
14 proposed.

15 So. I thank everybody for their work. I don't
16 think this will be the last time that we look at this and
17 hopefully we can work together on a little broader,
18 something more comprehensive, to address all types of
19 plastics. And I committed to folks to work on that with
20 you guys.

21 So, thank you, staff. Thanks for all your hard
22 work. It's been a long time coming.

23 [Adjourned at 1:34 p.m.]

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