

Re: Commingled Rate Regulation Petition To CalRecycle

PETITIONERS:

Consumer Watchdog

Container Recycling Institute

INTRODUCTION

Consumer Watchdog requests that the California Department of Resources Recycling and Recovery (CalRecycle) take regulatory action to address the significant overpayment to curbside programs for a “commingled rate.”

The overpayment results from an outdated and today flawed procedure used in calculating the “commingled rate” to curbside programs that includes payment for the contamination contained in mixed loads of CRV and non-CRV containers from curbside bins and other collection programs. The funds are paid from unredeemed consumer bottle deposits in the Beverage Container Recycling Fund and amount to a waste of millions of dollars of consumers’ money.

In addition to reconfiguring payments to curbside programs to exclude contamination, there are other reasons to pause and re-examine the commingled rate paid to curbside programs. SB 1013 (Atkins) amended the California Beverage Container Recycling and Litter Reduction Act to include wine and distilled spirits containers as deposit containers carrying CRV. The law went into effect on January 1, 2024, expanding the bottle deposit system by more than one billion containers.

Some curbside program operators are lobbying for an immediate adjustment to the commingled payment this year as more glass flows into the system, based on a legally required annual update. But as this year progresses, consumers will be throwing fewer wine and liquor bottles into recycling bins overall and taking more of them for redemption at recycling centers. Thus, paying out a new rate now based

on statistics from the 2023 rate when consumers had no choice but to throw wine and liquor bottles into recycling bins would mean paying curbside programs for non-existent bottles. Included in the new 2024 rate will also be the additional, considerable weight of contamination.

We petition CalRecycle to institute a rulemaking to change the procedure by which the commingled rate is calculated to exclude contamination.

STATEMENT OF FACTS

The commingled rate is one of several state payments made by CalRecycle to certified curbside operators for the recycling of CRV empties. The rate is set by CalRecycle under Title 14 Regulation 2930 via an annual survey and calculation of refund value per pound of glass, metal, and plastic containers commingled with non CRV-containers based on their percentage in the waste load mix.

California's Beverage Container Recycling and Litter Reduction Act, Section 14549.5 states that each year the Department must review and ensure payment of the most accurate commingled rate feasible for curbside recycling and collection programs. But the law leaves the procedure used by CalRecycle to arrive at the most accurate payment up to the Department that has the regulatory authority to change the procedure.

Currently, curbside and collection program operators are paid a commingled rate according to a formula by weight used by CalRecycle. Curbside loads of recyclables are sampled as outlined in Section 2930 of the Title 14 regulations.

The sampling is done prior to being run through sorting lines at Materials Recovery Facilities (MRFs) to determine the percentage mix of glass, metal and PET plastic CRV versus non-CRV materials. At the

front end, these loads appear to contain relatively clean materials. This made sense back in 1990 when quality standards for material end markets were much higher and most recyclables were collected dual-stream (fiber components such as paper or cardboard were segregated away from metal, glass and plastic containers) or were source separated.

In fact, in 1990, “single stream” recycling where different materials were thrown together into curbside bins did not exist. Many bins were source separated by material type. For example, separate bins existed for glass, for metal containers and for newspapers bundled with twine. That meant the output very closely mirrored the input and the materials were less prone to being missorted and contaminated. A few years later, in the early 1990s, single stream curbside collection came into being that allowed significant percentages of the wrong types of materials to show up in various bales and in glass.

Mixing materials together in the first place opened the door to contamination. Modern sorting technology has evolved, providing lower operating costs for curbside operators, but it is imperfect. This combination of mixing materials together and then sorting with advanced technology increases contamination in the loads at the back end of MRFs.

California’s current process assumes that 100% of the materials are sorted perfectly, but studies—including your own—show that is not the case. In 2017, the Container Recycling Institute (CRI) [reported](#) CalRecycle’s own 2016 estimate of how much contamination in loads was costing in payments to curbside programs. “Based on its measurements of the amount of contamination in bales from curbside programs, CalRecycle estimates that the current system of providing CRV and other payments based on bale weights, coupled with the quantity of non-CRV items in bale, results in over-payments of \$10 million per year,” CRI stated. “That is, these payments are being made not for the recyclable metal and plastic, but for the *contaminants themselves* present in bales of PET, HDPE, and aluminum.” The study

excluded glass. Had glass been included in the study, the dollar value for the contamination would have been higher.

Moreover, in its June 21 comment on CalRecycle's beverage container quality infrastructure grant program, CRI pointed out that as of 2023, curbside programs were receiving state payments of about \$220 million a year. CalRecycle allows curbside programs to self-report the percentage of their beverage containers in their loads and to use a greater percentage than the standard that CalRecycle typically allows. Sometimes, the self-reporting is twice as high as the statewide average. But the costs to recycle the containers are only about \$50 million per year. Curbside programs' annual profit of \$170 million appears to provide more than enough funds to produce loads of materials that are essentially free of contaminants. See: <https://consumerwatchdog.org/wp-content/uploads/2024/07/CRI-CalRecycle-QIG-Comment-062124.pdf>

According to Californians Against Waste, the 2024 commingled rates paid for CRV glass and PET plastic containers collected at curbside require an immediate update to avoid a "shortfall" in state payments of between \$40 million and \$80 million. See: <https://consumerwatchdog.org/wp-content/uploads/2024/08/CAW-Commingled-Rate-One-Pager-.pdf> This is not a shortfall but a bonus in addition to what they already make. To save at least \$10 million in consumer deposits used to run the direct return bottle deposit system—and likely substantially more—the formula that CalRecycle uses should be changed to account for the contamination of material that is claimed for CRV payments.

In addition, the Department should follow the procedure outlined under Title 14 Regulation 2930 (d) to calculate the commingled rate by having the loads "presented to processors" purchasing the materials sampled. See: <https://casetext.com/regulation/california-code-of-regulations/title-14-natural-resources/division-2-department-of-conservation/chapter-5-division-of-recycling/subchapter-12-dor-requirements/article-1-dor-determinations-and-calculations/section-2930-commingled-rate>

This means the materials must be sampled after they have come out the other end of Materials Recovery Facilities (MRF) sorting lines. They should be sampled at the point at which they have not yet been baled and prepared for sale instead of at the front end. This way the weight of the contamination can be accounted for and payments can be reduced accordingly.

But is not our intention to have the proper accounting of the commingled rate for MRFs turn into a reason to pay glass beneficiation facilities less money. In fact, the glass beneficiation facilities should be paid fairly for the work they do and the expenses they incur when they process, sort, and clean contamination from the glass mixtures they receive. Glass beneficiation facilities should receive higher payments when they receive more contamination. The greater the contamination, the more processing is necessary to produce a clean product. And the contaminants must be removed, transported to landfills, and tipping fees must be paid for each ton of contamination. If the commingled rate is not being used in a way that properly compensates glass beneficiation facilities, that is, pays them more when contamination levels are higher, then that payment formula should also be adjusted to fairly compensate these facilities.

Curbside operators should not be paid extra money amounting to a bonus for garbage. The new commingled payments that some curbside programs are demanding—without a new procedure to exclude payment for garbage—unfairly adds to existing state payments and profitable waste hauler municipal contracts, franchise agreements and scrap market sales.

PETITIONERS

Founded in 1985, Consumer Watchdog is a nonprofit public interest organization dedicated to providing an effective voice for taxpayers and consumers in an era when special interests dominate public discourse, government and politics. We deploy an in-house team of public interest lawyers, policy experts, strategists, and grassroots activists to expose, confront, and change corporate and political injustice every day, saving Americans billions of dollars and improving countless lives.

Container Recycling Institute, a nonprofit 501(c)(3) organization, is the model organization instrumental in bringing about a rapid increase in recycling for a world where no material is wasted and the environment is protected. CRI's mission is to make North America a global model for the collection *and* quality recycling of packaging materials. We produce authoritative research and reporting and educate on policies and practices that empower communities to reduce waste (and related emissions) and increase recovery, reuse, and high-end/closed loop recycling of beverage containers, packaging and printed paper. We maintain a database of information on container and packaging generation, disposal, recovery and recycling in the United States and abroad, and study container and packaging reuse and recycling options and legislation, including deposit systems, and their environmental and economic impacts nationally, in US states, and abroad. We provide information, consultation, technical assistance and tools to local citizens, media, community groups and public and elected officials considering a deposit system to recycle or reuse containers and packaging and also create and sponsor national networks for mutual progress for customers and stakeholders.

AUTHORITY

This petition is filed pursuant to the California Constitution, which guarantees the public the right to petition the government for redress of

grievances. Cal. Const. Art. 1 3. Additionally, this petition is filed pursuant to California Government Code 1347 et seq. This provision mandates a speedy response or a public hearing. Cal. Gov. Code 11347.1.

The Department's authority to take the actions requested in this petition derives from Title 14 Regulation 2930:

The method used to calculate the commingled rate per pound, by material type, shall include sampling procedures which consider, *at a minimum* [Italics Consumer Watchdog], the following factors:

- (a) Weight and analysis of randomly mixed pre-filled empty beverage containers and other prefilled containers of the same size in the original manufactured and unfilled state.
- (b) Weight and analysis of individual loads of empty beverage containers and other containers in their post-filled state as presented by consumers at recycling centers (selected statewide on a random basis), excluding reverse vending machines.
- (c) Weight and analysis of loads of empty beverage containers and other containers in their postfilled state redeemed or returned by consumers to reverse vending machines (selected statewide on a random basis).
- (d) Weight and analysis of loads presented to processors by curbside programs, community service programs and dropoff or collection programs.

Authority: Sections 14530.5(b) and 14536, Public Resources Code.

Reference: Sections 14506.7, 14549.5, 14552 and 14572, Public Resources Code.

RELIEF REQUESTED

Petitioner [or Petitioners] requests that CalRecycle immediately institute a rulemaking under its own regulatory authority to change the procedure outlined in Title 14 Regulation 2930 by which the commingled rate for curbside programs is set so that the weight of contamination in mixed

loads of CRV and non-CRV beverage containers is more accurate and unredeemed consumer deposits are not expended on contaminated waste bound for landfills.

CONCLUSION

Given the seriousness of the present problem, petitioners urge that CalRecycle immediately take the actions set forth in this petition.

Dated: Novemer 20, 2024

Respectfully submitted by petitioners/co-
petitioners:

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