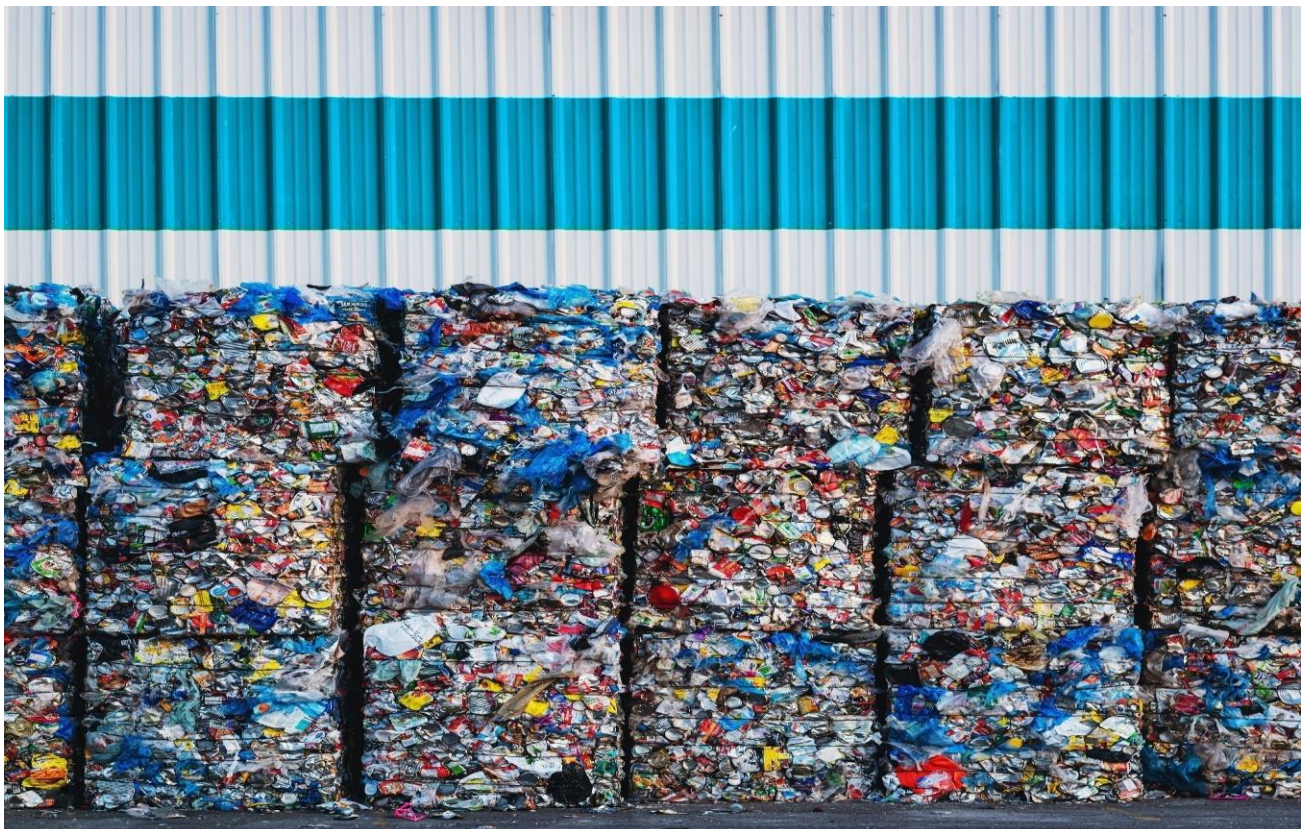


All Wrapped Up

Extended Producer Responsibility for Packaging


July 2025 Edition

In this month's edition of *All Wrapped Up*, we discuss how CAA is holding the line on its near-term deadlines in California despite a lack of regulatory authority; how the revised cost projections supporting the new SB 54 regulations were "driven almost entirely" by a lower estimate of plastic as opposed to actual cost savings for consumers; and the fact that producers are now prohibited from selling and distributing covered materials in Colorado and Oregon unless they are participating in the program. We explore the very first (and not the last!) lawsuit to challenge the constitutionality of state packaging EPR. And we take a deeper dive – in our *Issue in Focus* section – into how producers can assign their responsibilities to pay PRO fees and report data to their business partners.



July 2025 State-By-State Updates

California

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- **CAA is asking producers to register by September 5 (revised from September 2) notwithstanding the fact that the draft proposed regulatory text includes a registration deadline of 30 days after the rulemaking's effective date, which will likely not occur until at least January 2026. CAA announced that producers will be able to use the CAA Producer Portal to complete registration starting August 1.** CAA indicated that it will only issue the California Interim State Addendum to producers that have completed this registration process, even if the producer had previously submitted a registration form. CAA will begin releasing a Consultation Draft of the addendum to registered producers in August and indicated that the final version will be released for signature in September, along with the Minnesota Interim State Addendum.
 - **CAA also continues to hold the line on its November 15 data reporting deadline, despite the lack of regulatory authority delegated to CAA, the fact that the regulations that will likely govern data reporting have not been formally released, and the lack of guidance from CalRecycle. CAA will be asking producers to submit (a) the weight of plastic and the number of plastic components sold and distributed in 2023 for purposes of source reduction planning, consistent with CAL. PUB. RES. CODE § 42057(b); and (b) all covered material sold and distributed in 2023 by covered material category for purposes of fee estimates, consistent with draft CAL. CODE REGS. tit. 14, §§ 18980.5(d) & 18980.10.2, although actual fees for the first year of the program will be based on 2025 data. CAA has announced that the producer reporting portal will open September 15.**
 - The California Department of Resources Recycling and Recovery ("CalRecycle") submitted an updated Standardized Regulatory Impact Assessment ("SRIA") to the Department of Finance ("DOF") on June 30 to support the recently-released proposed draft regulatory text. Of note, the per-household average annual cost was revised downward from \$329 to \$190, ostensibly in keeping with Gov. Newsom's directive on March 7 to restart the rulemaking to cut costs.

We previously raised the question of whether Gov. Newsom's "push for the delay is really about costs or about something else entirely." In our March 25, 2025 special edition of *All Wrapped Up*, we explored whether the regulatory changes would be designed "to placate industry stakeholders" as opposed to resulting in any meaningful cost reductions for small businesses and consumers.

CalRecycle concludes in the SRIA that "revisions to the Proposed Regulations have resulted in cost changes that, while minor compared to the economic impacts analyzed in the SRIA, nevertheless constitute adjustments meaningful to stakeholders." That noted, CalRecycle also readily acknowledges in the SRIA that the revised cost projections were primarily based on a new methodology, as opposed to regulatory changes: "The most impactful changes to the figures presented in the 2025 SRIA are a result of using updated input data regarding the amount of plastic covered material that constitutes the [Source Reduction] Baseline."

DOF, which has 60 days to complete its review of the SRIA, provided an initial set of comments to CalRecycle on July 15. DOF characterized the revised cost projections a bit differently than CalRecycle, concluding that "the 42.1-percent downward revision to the total cost, from \$36.3 billion in the original SRIA to \$21 billion in this revised SRIA, is **driven almost entirely** by a lower estimate of annual plastic waste generated in California,

decreasing from 5.5 million tons in the 2021 estimate to 2.9 million tons in 2023.” Put differently, according to DOF, there is almost nothing in the draft proposed regulatory text that will reduce costs for consumers – almost all of the per-household average annual cost reductions referenced in the new SRIA are simply based on a new methodology.

DOF also directed CalRecycle to “provide a detailed explanation for the significant difference between the two estimates as well as a justification for why the revised estimate is more appropriate,” which is worth noting for at least two reasons:

- First, the baseline of plastics to be covered by the program that CalRecycle used for purposes of the new SRIA is the Source Reduction Baseline study prepared as part of the SB54 initial statewide needs assessment. As we discussed in the January 2025 edition of *All Wrapped Up*, this study was widely criticized, including by the SB54 Advisory Board, with one Board member cautioning others not to “lock in” on the study because CAA may “revisit the numbers and come up with a methodology that makes sense.” The unmistakable implication here was that the numbers in the Source Reduction Baseline study, in fact, do not make sense. One specific example the Board member provided was that the study suggested that California was somehow responsible for 25% of the world’s plastic consumption. CalRecycle is in a tough position: although actual data from producer reporting will invariably provide more accurate information, the agency may need a final rulemaking to compel producers to submit it.
- Second, the new SRIA is predicated on the Source Reduction Baseline estimates of plastic covered material of 2.9 million tons and 171.4 billion plastic components, down from 5.5 million tons and 201.4 billion plastic components. The baseline for the new SRIA, therefore, halves the weight of plastic that was previously assumed to be covered by the program. The new SRIA nevertheless quantifies the benefits to society and the environment associated with the program as *increasing* from \$40.3 billion to \$53.3 billion. CalRecycle attributed this increase to avoided negative impacts for individual years through 2031, whereas the old SRIA only included the avoided negative impacts in 2031. Although this may be a legitimate flaw with the old SRIA, the \$13 *billion* swing in the benefits analysis coupled with CalRecycle’s reliance on the Source Reduction Baseline study underscores concerns that Gov. Newsom’s directive to cut costs is being addressed with fuzzy math.
- CalRecycle released a report on June 30, entitled “What’s in California Landfills: Measuring Single-Use Packaging and Plastic Food Service Ware Disposed (2025) - Preliminary Findings,” consistent with CAL. PUB. RES. CODE § 42061(a)(3)(A), which requires CalRecycle to conduct “disposal-based characterization studies to determine the approximate amount of covered material disposed of in California landfills.” The report estimates that approximately 7.8 million tons of covered material were disposed of in California landfills in 2024, representing approximately 20% of total landfill disposal in California.
- CalRecycle released Frequently Asked Questions (“FAQs”) on July 11 regarding SB 54’s expanded polystyrene (“EPS”) food service ware restrictions.¹ SB 54 prohibited the sale and distribution of EPS food service ware as of January 1, unless certain recycling rates are met. According to CalRecycle, no producer has been able to make this demonstration. In addition to the FAQs, CalRecycle established a portal to allow members of the public to report

¹ CalRecycle, *Requirements for Expanded Polystyrene Recycling Rate Demonstration Frequently Asked Questions*, <https://www2.calrecycle.ca.gov/Docs/Web/130851>.

potential violations “to hold producers responsible if they sell EPS plastic foam food ware in California until they meet a 25% recycling rate.”²

Colorado

Hawaii (needs assessment only)

Illinois (needs assessment only)

Maine

Maryland

Massachusetts (needs assessment only)

Minnesota

Oregon

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- **Oregon’s sales and distribution prohibition started July 1, which is when packaging fees were due. The Oregon Department of Justice may now bring an action to prohibit the sale of a covered product in Oregon against any producer that has not registered and paid PRO membership fees pursuant to OR. REV. STAT. § 459A.869.³**



- **Life Cycle Assessment (“LCA”) reports are due August 15, for those producers seeking eco-modulation Bonus A.⁴** As discussed in the Midsummer 2025 edition of *All Wrapped Up*, Bonus A will be granted to producers that complete an LCA of a SKU or batch of SKUs and disclose the results to the Oregon Department of Environmental Quality (“DEQ”). The bonus is set at 10% of base fees, to be capped at \$20,000 for each SKU or batch of SKUs for up to 10 SKUs. Pursuant to OR. ADMIN. RULE 340-090-0920, the LCA must conform with International Standards Organization requirements. Of note, a representative from Procter & Gamble, which sits on the Oregon Recycling System Advisory Council, observed during a July 16 meeting that the bonus “will not move the needle” because the cost of conducting the LCA is higher than the bonus.



- **The National Association of Wholesaler-Distributors (“NAW”) filed a lawsuit on July 30 against the Oregon DEQ in the U.S. District Court for the District of Oregon, challenging the constitutionality of Oregon’s EPR packaging law.** NAW is a trade association purportedly representing the \$8.2 trillion wholesale distribution industry. This is the first case – and will likely not be the last – challenging a state EPR packaging law. NAW asserts that the law violates (a) the nondelegation doctrine by delegating regulatory authority to a third party; (b) the Commerce Clause by unfairly targeting out-of-state

² CalRecycle, *EPS Food Service Ware Notification Form*, <https://calrecycle.ca.gov/packaging/packaging-epr/notificationform/>.

³ Oregon’s list of registered companies is available at https://static1.squarespace.com/static/64260ed078c36925b1cf3385/t/67f5ae4d1bb06a2b31b21770/1744154190778/Oregon+Registration+List_04082025+FINAL.pdf. Oregon producers that are not on this list are now subject to the sales and distribution prohibition.

⁴ This deadline appears in guidance issued by CAA May 16, entitled “Life Cycle Assessment Bonus A – Report Submission Guidance.”

producers; (c) the unconstitutional conditions doctrine by conditioning access to Oregon markets on contracts with a third party; and (d) federal and state due process by requiring producers to enter into “agreements” with CAA. Litigation will likely take well over a year to run its course. In the interim, the filing of a Complaint without a temporary restraining order or preliminary injunction issued by the Court will not inhibit or delay the law’s implementation and enforcement.

- CAA has repeatedly underscored the potential for a 35% fee increase in 2026, consistent with the cost projections set forth in the PRO plan, which estimates \$188 million for pre-program and 2025 costs and \$254 million in FY2026 costs. These projections have raised concerns by producers that fees will continue to skyrocket in future years. We do not, however, expect increases of this magnitude to continue beyond 2026 given that much of the costs incurred within the first couple years of Oregon’s program are “up-front” capital investments to expand local government collection services, including new trucks and curbside containers. To the contrary, we expect Oregon’s costs to decrease in future years relative to other EPR states because of Oregon’s shared responsibility model, which allocates the actual costs of curbside collection and transportation (e.g., staffing, fuel, etc.) to local governments instead of producers.
- The Oregon Recycling System Advisory Council held a meeting July 16 to discuss eco-modulation Bonus C, which will be granted to producers for switching from single-use packaging to reusable or refillable packaging. Bonus C is capped at \$50,000 for each SKU or batch of SKUs. The Council discussed whether the bonus would adequately incentivize reuse; how reuse is differentiated from refill; and from where the bonus funds will be sourced.
- CAA is required to report information to the Oregon DEQ that will be used to calculate interim market share and interim modified market share for the 2025 program year by August 15, pursuant to OR. ADMIN. R. 340-090-0700(3). Interim market share for the 2025 program year is calculated using the weight of covered product sold into Oregon in the 2024 calendar year by each member producer, organized by type of material. There are at least three aspects of Oregon’s EPR law for which market share is relevant. First, the PRO must maintain a minimum interim market share of 10%, pursuant to OR. REV. STAT. § 459A.869(12). Second, market share dictates the applicability of the exemption for producers that do not exceed a minimum market share at OR. REV. STAT. § 459A.872(2). Third, the 25 largest producers by market share must conduct a life cycle evaluation on 1% of their products by December 31, 2026 pursuant to OR. REV. STAT. § 459A.944.

Rhode Island (needs assessment only)

Washington

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Issue In Focus: Assigning Producer Responsibility

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King & Spalding + Extended Producer Responsibility

King & Spalding has a cutting-edge extended producer responsibility practice. We have been at the forefront of these laws long before Maine became the first state to pass a comprehensive EPR packaging law in 2021. Our EPR practice extends beyond paper and plastics to batteries, electronics recycling, and other product stewardship, and our clients include producers as well as service providers. The firm also has one of the deepest environmental teams among the AmLaw top tier firms, providing full-service capability and a global reach. Chambers USA, one of the most preeminent legal ranking organizations, named King & Spalding as the Environmental Law Firm of the Year in 2024.

Authors for this edition



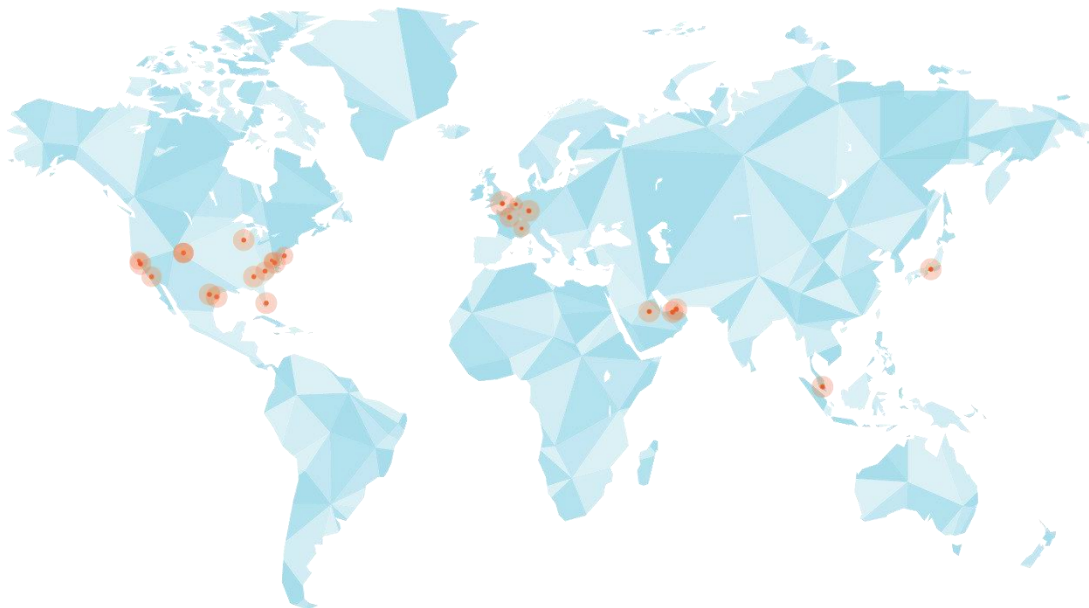
Karl Heisler
Partner
Chicago
+1 312 764 6927
kheisler@kslaw.com



Cynthia Stroman
Partner
Washington D.C./Houston
+1 202 626 2381
cstroman@kslaw.com



Sydney Weiss
Associate
Chicago
+1 312 764 6907
sweiss@kslaw.com



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