

What New Study Means For Recycling Compliance In Calif.

By **Katie Bond and Samuel Butler** (May 13, 2025)

Four years ago, California enacted a law, commonly referred to as S.B. 343, which governs how recyclability claims in the state must be substantiated. Essentially, instead of requiring only that an item labeled as "recyclable" is capable of being recycled, S.B. 343 requires an item to have some likelihood of being recycled.

The Legislature explained that, with S.B. 343, it intended to "provide information to the public" on whether a product or packaging is "of a material type and form that routinely become[s] feedstock used in the production of new products and packaging."^[1]

With CalRecycle's April 4 release of a final "material characterization study," mandated by S.B. 343, the 18-month countdown to the statutory compliance date began. This article discusses what CalRecycle's study includes, what's missing and where companies are left in terms of compliance.

In short, it will be important for companies to carefully review the study, assess whether they can demonstrate that the materials they produce meet its criteria, and then decide whether the risks of making a recyclability claim in California outweigh the benefits.



Katie Bond



Samuel Butler

Background on S.B. 343

S.B. 343 includes the following key requirements for labeling an item "recyclable" in California:

A product or packaging is considered recyclable in the state if, based on [a material characterization study] published by [CalRecycle], the product or packaging is of a material type and form that meets both of the following requirements:

[1] The material type and form is collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60 percent of the population of the state.

[2] The material type and form is sorted into defined streams for recycling processes by large volume transfer or processing facilities ... that process materials and collectively serve at least 60 percent of recycling programs statewide, with the defined streams sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention.^[2]

In addition to these requirements, several other requirements specific to the particular item, like a limit on total organic fluorine, apply.^[3] S.B. 343 also exempts certain items — for instance, beverage containers subject to the California Redemption Value program.^[4]

The California attorney general, county district attorneys and private plaintiffs may enforce S.B. 343 under the state's false advertising statute. That statute provides, in relevant part, that "[i]t is unlawful for a person to make an untruthful, deceptive, or misleading

environmental marketing claim, whether explicit or implied."[5]

Under California's false advertising law, courts apply the perspective of the "reasonable consumer" to assess whether advertising is false or misleading.[6] Under this standard, a plaintiff must demonstrate that the public will likely be deceived by the advertising.[7]

CalRecycle's Final Material Characterization Study

CalRecycle published preliminary material characterization studies at the end of 2023 and 2024. This year, on April 4, CalRecycle published a final version.[8]

As reflected in the final study, CalRecycle is interpreting its mandate to produce a material characterization study as having a first part, then a second part with two subparts. Specifically, according to CalRecycle, it must show in the study whether:

- A given material type and form is collected for recycling by recycling programs serving jurisdictions that include at least 60% of the state's population; and
- A given material type and form is sorted into defined streams for recycling by large volume transfer or processing facilities, or LVTPs, that
 - Collectively serve at least 60% of recycling programs across the state, and
 - Send the defined streams to a reclaiming facility that reclaims the material "consistent with the requirements of the Basel Convention."

Requirement 1

In the final study, Table 1 addresses in a straightforward manner the first requirement, to determine what materials are collected for recycling by programs for jurisdictions that include at least 60% of the state's population.

For instance, for "White Office-Type Paper and Mail," Table 1 reports that 99% of the population has access to recycling collection. The second part is where the analysis takes on more complexity.

Requirement 2a

Table 2 addresses in a relatively straightforward manner the coverage of LVTPs. Table 2 identifies the percentage of counties served by facilities that sort the identified material types and forms into outflows.

This information is based on two sources: (1) recycling program outflow data that CalRecycle already possessed, and (2) phone and on-site surveys of 37 LVTPs.

Technically, S.B. 343 required CalRecycle to assess what recycling programs LVTPs served, rather than counties. However, in discussions, CalRecycle has explained that assessment by county was the most, and possibly only, feasible route, given the sheer number of recycling programs, and the fact that any given program might use multiple LVTPs.

Although perhaps not ideal, any challenger, whether it be a state actor or private plaintiff, would have to demonstrate how this adjustment deceives reasonable consumers — an

endeavor that would seem to be difficult in the face of a technical adjustment by CalRecycle driven by practicalities.

Given other parts of CalRecycle's study, however, the assessment under the second requirement does not end there. Rather, the study explains CalRecycle's view that requirement 2a is addressed not only by Table 2, but also Table 3, which is intended to speak to sorting by LVTPs, in general, apart from the coverage of LVTPs.

Table 3 reflects a material characterization conducted by a contracted field team on samplings from 10 facilities of actual outflows to determine the percent of material type and form.

Against this background, to assess a "recyclable" claim for any given material, companies will likely do well to consider Table 2 primarily — and solely for the 60% analysis — then check to be sure nothing in Table 3 undercuts or calls into question the Table 2 determination that the material is actually sorted.

For instance, Table 2 indicates that 97% of counties were served by LVTPs sorting "White Office-Type Paper and Mail." Table 3 does not include samples for that specific category, but indicates that "White Office Paper" outflows were composed of 100% "White Office-Type Paper and Mail."

Table 3 also assessed 44 samples of "Old Newspaper (ONP) and Mixed Paper" and found that 10% of those outflows were also composed of "White Office-Type Paper and Mail." Finally, another 44 samples of "Residuals" outflows destined for landfills reportedly included 2% "White Office-Type Paper and Mail."

While it is not entirely clear why the category names shift, or why white office-type papers landed in several outflows, including at least some in "Residuals," Table 3 appears to support Table 2's reporting that LVTPs in fact sort "White Office-Type Paper and Mail" into a defined stream.

To be sure, Table 3 appears to have its issues. For instance, some materials were subject to over 40 samples, while others only had one relevant sample. There is also no clear criterion, statutory or otherwise, for determining how successful LVTP sorting has to be for a material type and form to qualify as "sorted."

That said, the table is still part of the record, such that checking it alongside Table 2 will likely help reduce risk.

Requirement 2b

As noted above, Table 3 seeks to provide information on what materials, in general, are sorted by LVTPs. CalRecycle, however, provides no data, for the purposes of requirement 2b, on sorted material being sent to, or reclaimed by, reclaiming facilities "consistent with the requirements of the Basel Convention."

The study explains that S.B. 343 "does not give CalRecycle the authority to require reclaiming facilities in or out of the state to report on their acceptance of materials and the ultimate reclamation of those materials." The study further acknowledges that because it does not provide this information, entities will require additional information to comply with S.B. 343.

The study, on page 2, does provide those elements that CalRecycle believes are "most relevant" to S.B. 343, which would likely be helpful if a company or trade group were to pursue further investigation.

Implications for "Recyclable" Claims

In general, throughout our conversations with CalRecycle, various representatives have noted that what claims companies make is not within CalRecycle's purview.

The final study emphasizes that point again, stating, for instance, that S.B. 343 "neither authorizes nor directs CalRecycle to determine or report on the recyclability of particular products and packaging or the appropriate use of the chasing arrows or other indicators of recyclability."

With the final characterization study, companies will need to consult Tables 1, 2 and 3 to assess whether any given material is "collected for recycling" and "sorted into defined streams" for the purposes of S.B. 343.

Companies will then need to carefully assess — and likely make a risk call on — whether Table 3, and any other information a company might be able to gather, is adequate to show that the material is "sent to and reclaimed at a reclaiming facility consistent with the requirements of the Basel Convention."

Another possibility is that companies will simply decide the risks of making "recyclable" claims in California outweigh the benefits, and employ disclosures that items are recyclable except in California.

The California attorney general signed off on a disclosure of this sort in an older settlement involving biodegradability claims for plastics.[9] Companies may begin to investigate the possibilities of fashioning a similar disclaimer for recyclability claims.

Katie Bond is a partner and Samuel Butler is an associate at Keller and Heckman LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Legislative Counsel's Digest, Cal. Sen. Bill No. 343 (Oct. 6, 2021), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB343.

[2] Cal. Pub. Res. Code §42355.51(d)(2). The Basel Convention, among other things, provides that household waste can only be traded across borders with the importing country's consent, and only when the exporting country has no reason to believe that the particular wastes will not be handled in an environmentally sound manner. See <https://www.basel.int/>.

[3] Cal. Pub. Res. Code §42355.51(d)(3).

[4] Cal. Pub. Res. Code §42355.51(d)(6).

[5] Cal. Bus. & Prof. Code § 17580.5.

[6] *Dodson v. Tempur-Sealy Int'l Inc.*, No. 13-CV-04984-JST, 2014 WL 1493676, at *6 (N.D. Cal. April 16, 2014) (citing *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir.2008)).

[7] *Id.*

[8] <https://www2.calrecycle.ca.gov/Publications/Details/1751>.

[9] Consent J., *People v. ENSO Plastics et al.*, No. 30-2011 518091 (Cal. Sup. Ct. March 25, 2013).