
THIRD READING

Bill No: AB 1201
Author: Ting (D), Friedman (D), Lorena Gonzalez (D) and Mathis (R)
Amended: 9/3/21 in Senate
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-0, 7/7/21
AYES: Allen, Gonzalez, Skinner, Stern, Wieckowski
NO VOTE RECORDED: Bates, Dahle

SENATE APPROPRIATIONS COMMITTEE: 6-0, 8/26/21
AYES: Portantino, Bradford, Jones, Kamlager, Laird, McGuire
NO VOTE RECORDED: Bates

ASSEMBLY FLOOR: 77-0, 5/28/21 - See last page for vote

SUBJECT: Solid waste: products: labeling: compostability and biodegradability

SOURCE: California Compost Coalition

DIGEST: This bill expands content and labeling requirements for compostable products.

Senate Floor Amendments of 9/3/21 exempt fiber products from demonstrating compostability, add clarification to the third-party certification requirement, and make changes to both the National Organic Program input requirements and labeling requirements, among other things.

ANALYSIS:

Existing law:

- 1) Declares that it is the public policy of the state that environmental marketing claims should be substantiated by competent and reliable evidence to prevent deceiving or misleading consumers about the environmental impact of plastic products. (Public Resources Code (PRC) §42355.5)

- 2) Defines “plastic product” as a product made of plastic, whether alone or in combination with other material, including consumer products, as defined, package or packaging components, and food or beverage containers. (PRC §42356)
- 3) Prohibits the sale of a plastic product that is labeled “compostable” or “home compostable,” unless it meets certain American Society for Testing and Materials (ASTM) standard specifications, the OK Compost HOME certification, as specified, or a standard adopted by the Department of Resources Recycling and Recovery (CalRecycle), or unless the plastic product is labeled with a qualified claim for which CalRecycle has adopted a relevant standard, and the plastic product meets that standard. (PRC §42357)
- 4) Prohibits the sale of a plastic product that is labeled as “biodegradable,” “degradable,” “decomposable,” or implies that the plastic product will break down, fragment, biodegrade, or decompose in a landfill or other environment, except as specified. Requires a manufacturer or supplier to provide a person, upon request and within 90 days of the request, easily understandable and scientifically accurate documentation of compliance with these requirements. (PRC §42357)
- 5) Authorizes CalRecycle to review a new standard developed by ASTM or any other organization for labels “compostable” or “marine degradable” and to make recommendations to the Legislature if CalRecycle determines the new standard is more protective of public health, public safety, and the environment, and consistent with state policies. (PRC §42356.1)
- 6) Authorizes the sale of commercial agricultural mulch film labeled “soil degradable” if CalRecycle has adopted the European Committee for Standardization’s appropriate standard specification or an equivalent or more stringent standard and the commercial agricultural mulch film is certified to meet both the specification and the ASTM standard specification for compostability. (PRC §42357)
- 7) Requires CalRecycle to, by July 1, 2020, convene a Statewide Commission on Recycling Markets and Curbside Recycling, and, by January 1, 2021, to issue policy recommendations to achieve market development goals and identify products that are recyclable or compostable. (PRC §42005.5)

This bill:

- 1) Expands product labeling requirements related to biodegradability and compostability from “plastic products” to “products.”
- 2) Exempts fiber products that do not incorporate plastics or polymers from complying with ASTM standards.
- 3) Prohibits a person from selling a product in California that is labeled with the term “compostable” or “home compostable” unless the product satisfies all of the following:
 - a) Has certification from a third-party certification entity, given that:
 - i) CalRecycle has approved a third-party certification entity for a standard specification pursuant to this section; and,
 - ii) CalRecycle has approved of that certification entity at least one year prior, and not before January 1, 2024.
 - b) On and after January 1, 2026, is an allowable organic input under the requirements of the United States Department of Food and Agriculture (USDA) National Organic Program (NOP). The director may grant a five-year extension for complying with this requirement if it is or will soon be:
 - i) Included as allowed on the National List of Allowed and Prohibited Substances for the NOP; or,
 - ii) Included as an allowable organic input for compost under federal law.
 - c) Does not contain perfluoroalkyl or polyfluoroalkyl substances (PFAS) above a specified limit;
 - d) Is labeled in a manner that distinguishes the product from a noncompostable product upon reasonable inspection by consumers and to help enable efficient processing by solid waste processing facilities; and,
 - e) Is designed to be associated with the recovery of desirable organic wastes.
- 4) Requires CalRecycle, through a public stakeholder process, to determine if it would be feasible to separate the collection of organic waste that is and is not suitable for use in organic agricultural applications. If such bifurcation is deemed feasible and would enable efficient processing by solid waste facilities, CalRecycle shall adopt regulations on or before January 1, 2026 to establish a

bifurcated approach and products not collected for use in organic agricultural amendments will not be subject to the requirement that it is allowable agricultural organic input under the USDA NOP.

- 5) Authorizes CalRecycle to adopt regulations for determining whether products are clearly distinguishable from noncompostable products upon quick inspection by consumers and solid waste processing facilities. In adopting regulations, CalRecycle may consider whether the regulations are consistent with labeling requirements of other states, stakeholder input, and industry-standard guidelines, and may include requirements that products are not designed, pigmented, or advertised in a way that is misleading to consumers.

Background

- 1) *Compostable products*. Compostable products break down into their organic constituents under strict control of environmental factors including temperature, aeration, and nutrient concentration. Unlike biodegradable products, which simply means decomposable by action of living organisms, compostable means it must additionally break down into soil conditioning material (i.e. compost). There are different types and levels of sophistication of composting, ranging from at-home backyard static piles to industrial composting plants. Often, manufactured “compostable” products made from biobased materials do not break down as easily as food waste and require more industrial composting that can grind them down or use more extreme conditions to degrade material at a faster rate.

Many businesses, governments and individuals are designing or purchasing packaging, food service ware, and other products to be compostable as a means to reduce environmental impacts and conserve resources. However, not all “compostable” products provide the intended environmental benefits. The Oregon Department of Environmental Quality reviewed literature from 18 years of environmental life cycle assessments of compostable packaging and food service ware and found that, in the majority of comparisons, compostable materials had higher environmental impacts than either non-compostable materials, or using compostable materials and treating them via recycling, landfilling, or incineration. One primary reason for this is the potential for higher burdens associated with producing the feedstocks used to make different types of compostable packaging. Another is that composting, unlike other end-of-life waste management alternatives such as recycling, is a relatively poor method of recovering nutrients or value embedded in human-made materials such as packaging.

- 2) *Compostable product labeling standards.* California's labeling requirements for compostable products are mainly focused on plastics. They were crafted to ensure that environmental marketing claims are accurate and do not mislead consumers. Prior to the state adopting standards in 2004, plastic with misleading claims of biodegradability and compostability were widely marketed to consumers, even if they did not break down in the environment. These materials are also not recyclable and are instead a contaminant when mixed with recyclable plastic waste. The Legislature has enacted numerous bills that attempt to prevent misleading environmental marketing claims and to ensure that the materials we use can be properly managed, including banning the use of terms like "biodegradable" for plastic products. To be labeled "compostable," plastic products must meet the widely accepted ASTM standards for composting in industrial compost facilities (D6400 for plastics and D6868 for paper and other products coated in plastic or other polymers).
- 3) *Federal law.* The FTC broadly prohibits unfair and deceptive acts or practices in advertising. To aid marketers in avoiding making environmental claims that mislead consumers, the FTC issued "Green Guides," which states that "a marketer claiming that an item is compostable should have competent and reliable scientific evidence that all the materials in the item will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner (i.e., in approximately the same time as the materials with which it is composted) in an appropriate composting facility, or in a home compost pile or device.
- 4) *Third party verification.* There are several independent companies that certify compost according to a robust set of standards. The Biodegradable Products Institute and the Compost Manufacturing Alliance are two examples. To be certified by either, the product must demonstrate compliance with ASTM D6400 and/or D6868. Both also have a policy that organic fluorinated chemicals, such as PFAS, cannot be intentionally added and/or present. Products may need to meet additional requirements for certification, such as:
 - Not intentionally include carcinogens, mutagens, or reproductive toxins, and trace amounts must be below 0.1% by weight; and,
 - Substances identified as persistent, bioaccumulative, and toxic, as specified, shall not be intentionally added or exceed 0.1% by weight.

- 5) *Perfluoroalkyl and polyfluoroalkyl substances (PFAS)*. PFAS are a class of chemicals characterized by highly stable carbon-fluorine bonds that are used to make fluoropolymer coatings and products that resist heat, oil, stains, grease, and water. These coatings are commonly used in food packaging, such as in fast-food wrappers, paper cups, microwave popcorn bags and take-out containers. PFAS are a concern because they do not break down in the environment, can move through soils and contaminate waterways, and bioaccumulate in fish and wildlife, which is why they are often called “forever chemicals.” PFAS chemicals can also accumulate and persist in the human body, and several PFAS chemicals have been linked with adverse health effects.
- 6) *Organic standards*. CalRecycle’s 2010 Assessment of Compost and Mulch Infrastructure estimated that more than half of the state’s compost is applied to agriculture lands, with a large fraction used in organic agriculture. Organic inputs, such as compost, that are suitable for use in organic production in California are required to meet USDA NOP standards, which specify what substances are suitable feedstocks for compost that can be applied to crops and soil in organic agricultural production.

Comments

- 1) *Purpose of Bill*. According to the author, “AB 1201 ensures that California’s compost stream is safe from harmful chemicals and that what is labeled as compostable actually is compostable. A majority of compostable packaging is currently sorted then disposed of in landfills. Californians are paying higher costs for their food to come in compostable containers and even more for their waste collector to sort these erroneously marked materials, only to end up in the landfill rather than a compost facility. This practice also results in higher environmental costs. It’s crucial that claims of compostability reflect the realities of the infrastructure where these products are managed and that we do not allow harmful “forever chemicals” to impact our health through the compost process.”
- 2) *Cleaning up the waste stream*. Several laws have been passed in California in the last decade encouraging a transition to either fully recyclable or fully compostable products. There has been a boom in companies developing compostable food packaging to meet this demand. However, not all are equally compostable or biodegradable. These have been followed by new laws to ensure that products meet standards of compostability and are labelled correctly so they are disposed of properly. However, the standards are imperfect. Composting technology has advanced since the adoption of these

standards and material can be processed more quickly, so thicker compostable items, like those made from bioplastics, often have to be removed from the finished compost and landfilled. Furthermore, composting facilities vary across the state, and many facilities do not have the capacity to break down certain types of products. Composting is generally designed to manage organic waste, like yard clippings and food waste, and currently is not the ideal management option for manufactured products, even if they are technically compostable.

- 3) *What products would be impacted?* Under AB 1201, products beyond plastics would need to meet the specified requirements to be labeled as “compostable” and “home compostable,” and the plastic products regulated under current law would need to meet several additional requirements, including third-party certification and not containing PFAS. Eventual inclusion on the federal NOP list is also required, unless it is determined that the organic waste stream can be bifurcated between organic agricultural purposes and other purposes where the NOP standard is not required. Furthermore, products that are not associated with the collection of desirable organic waste may be excluded from using these labels, including many products that meet ASTM standards, but do not provide any desirable nutrient value.

By changing the existing definition of “plastic products” to “products” in statute, AB 1201 would also expand the scope of materials that need to meet specified standards related to environmental marketing claims be labeled as “biodegradable,” “degradable,” and “decomposable” beyond plastic products. Fiber products (e.g. napkins and food service ware) that are made from paper, or other plant-based fibers like sugar cane (bagasse), bamboo, etc. that are not laminated, mixed, or otherwise incorporate plastic or polymers are generally understood to be biodegradable and compostable and will remain exempt.

- 4) *Labeling requirements.* Municipal compost waste is often contaminated with non-compostable materials. Consumers need to be able to correctly identify when a product should be composted and workers at composting facilities need to be able to quickly assess if a product is compostable or non-compostable when sorting the material they receive. AB 1201 requires compostable material to be labeled so they are distinguishable from non-compostable products distinguished upon “reasonable” inspection by consumers and to “help enable efficient processing by solid waste facilities.” However, non-compostable products could be greenwashed – labeled to mirror traits of compostable product – which remains an issue for composting facilities. AB 1201 does

allow CalRecycle adopt regulations for determining whether products comply with the labeling requirements, which may help to address this concern.

Related/Prior Legislation

SB 228 (De Saulnier, Chapter 406, Statutes of 2010) required a compostable plastic bag manufacturer meeting certain standards to ensure that the compostable plastic bag is “readily and easily identifiable” (as defined in this bill) from other plastic bags, in a manner that is consistent with the Federal Trade Commission Guides for the Use of Environmental Marketing Claims.

AB 2147 (Harman, Chapter 349, Statutes of 2006) prohibited persons from selling plastic food and beverage containers labeled as “compostable,” “biodegradable,” “degradable,” or any form of those terms, unless the containers meet certain requirements.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- Ongoing cost pressure of about \$120,000 annually (Integrated Waste Management Account [IWMA]) for the Department of Resource Recycling and Recovery (CalRecycle) to promulgate regulations if necessary.
- To the extent that CalRecycle is responsible for the implementation and enforcement of the provisions of this bill, it would result in additional costs of approximately \$125,000 annually (IWMA).

SUPPORT: (9/3/21)

California Compost Coalition (source)

Agromin

American Refuse

Association of Compost Producers

Athens Services

BLT

Breast Cancer Prevention Partners

Burrtec

California Product Stewardship Council

California State Association of Counties

California Waste Haulers Council

Californians Against Waste

Cal-Waste

Carts
Center for Environmental Health
City of Long Beach
City of Los Angeles
City of Thousand Oaks
Clean Fleets
Clean Water Action
Clover Flat
Ecoconsult
Environmental Working Group
Heal the Bay
League of California Cities
Los Angeles County Solid Waste Management Committee/Integrated Waste
Management Task Force
Marin Sanitary Service
Monterey Bay Aquarium Foundation
MRWMD
Mt Diablo Resource Recovery
Napa Recycling and Waste Services
National Stewardship Action Council
Natural Resources Defense Council
Northern California Recycling Association
NRWS
Plastic Pollution Coalition, a Project of Earth Island Institute
Pleasanton Garbage Service
Quackenbush Mountain Resource Recovery & Compost Facility
Recology
Recyclesmart
Refuel
Republic Services - Western Region
Resource Recovery Coalition of California
Rethinkwaste
San Gabriel Valley Council of Governments
Save Our Shores
Seventh Generation Advisors
Sierra Club
Silicon Valley Democratic Club
Soiland Co., Inc.
Sonoma Compost
South Bayside Waste Management Authority DbA Rethinkwaste

The 5 Gyres Institute
The Center for Oceanic Awareness, Research, and Education
Tracy Delta Solid Waste Management
Upper Valley
Vision Recycling
Zbest Composting

OPPOSITION: (9/3/21)

4 Blue Waves
California Apartment Association
Organic Waste Systems
Regional Hispanic Chamber of Commerce
Rural County Representatives of California
Sustainable Agriculture & Energy of Monterey County

ASSEMBLY FLOOR: 77-0, 5/28/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Cristina Garcia, Maienschein

Prepared by: Rylie Ellison / E.Q. / (916) 651-4108
9/7/21 18:30:32

**** END ****