ENSURING COMPLIANCE WITH THE RPPC PROGRAM

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In 1991, California passed the Rigid Plastic Packaging Container (RPPC) law imposing new source reduction, reusability, and recycling compliance requirements on product manufacturers selling or offering to sell products held in RPPCs. The law was intended to minimize plastic waste disposal at landfills and to maximize the availability and use of recycled postconsumer plastic.

Under the California Code of Regulations, Title 14, Section 17943(aa), a rigid plastic packaging container is defined as any plastic packaging container having a relatively inflexible shape or form that can maintain its shape while holding other products. A container will be deemed *relatively inflexible in shape or form* if it holds the same shape when empty or full.

As of the January 1, 2013 revised regulations put in place by the California Department of Resources Recycling and Recovery (CalRecycle), an RPPC must be capable of at least one closure (but need not be capable of multiple re-closures), must hold a product that is to be sold or distributed in California, and must be composed entirely of plastic – except for certain *incidental*, non-plastic packaging elements such as lids and caps. It must also have a minimum capacity of eight fluid ounces and a maximum capacity of five fluid gallons.

The question of what constitutes "incidental" non-plastic elements has become a complex grey area in the law. For example, clamshell packages with incidental cardboard inserts for marketing purposes could fall within the classification of a covered RPPC. If there is a question concerning the incidental nature of a non-plastic component of packaging material and whether or not a particular package is regulated by the RPPC, a company may apply for a clarification letter from Cal Recycle.

RPPC Compliance Exemptions

California's RPPC law does not apply to exempt products. Exempt products include food, drugs, cosmetics, medical devices, and infant formula, toxic or hazardous products regulated by the Federal Insecticide, Fungicide, and Rodenticide Act, and any hazardous material that is subject to Department of Transportation regulation.

If you are unsure of your exemption status, seek the counsel of experienced California environmental compliance lawyers to ensure that you do not unknowingly violate RPPC law.

Manufacturers selling or offering to sell non-exempt products held in RPPCs must choose to conform with one of several available compliance options, including but not limited to source reduction compliance and/or recycling rate compliance.

Penalties for Failure to Comply

Every year, the California Department of Resources Recycle and Recovery (CalRecycle) reviews a portion of registered product manufacturers to ensure compliance with the RPPC program. Failure to comply may result in the assessment of significant penalties.

Violations include late submittal, non-submittal, or inaccurate/incomplete submittal of certifications, the submittal of false or misleading information, and failure to comply with any of the available container compliance options. Each violation is punishable by a fine of up to $100,000 and additional civil penalties of up to $50,000. Annual penalties cannot exceed $100,000 per violator.

The Effects of the 2013 Revised Regulation

As of January 1, 2013, revised RPPC regulations developed by CalRecycle – and approved by the Office of Administrative Law – had taken effect. The revised regulations changed numerous aspects of pre-existing RPPC regulation, but two changes were particularly significant.

Broadening the definition of an RPPC

Under the revised regulations, the definition of an RPPC was broadened to include plastic containers that did not have multiple reclosure capability, as well as plastic containers that used non-plastic, incidental elements such as lids, caps, and handles. As a result, companies will have to account for more containers falling under the ambit of RPPC regulation, and compliance thereof.

New precertification process

The 2013 revised regulations implemented a new precertification process for product manufacturers. CalRecycle sends letters to product manufacturers requesting preliminary information confirming RPPC use and company representative contact information. This letter process is intended to provide notice to product manufacturers so they can better prepare for RPPC compliance. Manufacturer engagements with the process is required. Failure to respond to the precertification notice letter is a fineable offense.

How the Revisions Affect Businesses Using Container Manufacturers That Are Overseas

The original regulations were a source of confusion for many regulated product manufacturers and container manufacturers, as it was difficult for them to determine who was required to comply since there was only one definition to cover both. However, the revised law clearly assigns compliance responsibility and defines product manufacturers as those who use regulated containers. More specifically, product manufacturers must ensure their containers are compliant from both domestic and overseas suppliers.

Businesses throughout California and elsewhere in the world face a plethora of challenges when dealing with Chinese suppliers with respect to their compliance with state and federal rules on materials. Such suppliers are not governed by California law and accordingly, they do not have to comply with reporting requirements. That said, CalRecycle encourages businesses to collaborate with Chinese suppliers that proactively document their compliance.