



August 26, 2013

Senator Loni Hancock
State Capitol, Room 2082
Sacramento, CA 95814

Senator Lou Correa
State Capitol, Room 5061
Sacramento, CA 95814

Re: Oppose Unless Amended Position on SB 254 Mattress Legislation

Dear Senators Hancock and Correa:

On behalf of the organizations identified above, we must regretfully oppose SB 254 regarding mattress recovery and recycling unless a number of important amendments are taken. Our organizations have been engaged in this issue this session and last and have raised several of these concerns on numerous occasions with you and/or your staff and sponsors. A letter was sent July 23, 2013 with very specific tracked changes to the bill yet most were not taken in committee.

[CPSC](#) is a thought leader on producer responsibility in California and is supported by 135 jurisdictions representing 63 percent of California's population. All we do is producer responsibility policy and are the most studied, traveled, and published on the subject in California. We desperately want to support this bill but feel it is our duty to educate the legislature and all stakeholders based on our breadth of experience what we believe will work and what will not. We just want good producer responsibility policy for California and for the expectations of supporters to be met when it is implemented.

We have reviewed the August 19, 2013 amendments that were taken in Assembly Natural Resources Committee and our most important issues that we have been raising regarding this bill have not yet been addressed. We have attached a set of proposed amendments to the August 19 version of the bill which will make this new producer responsibility program more effective and efficient and is based on experience from the first three producer responsibility bills passed and implemented to date in California for mercury thermostats in 2008 and paint and carpet in 2010.

Our suggested amendments are in priority order and will:

1. Ensure that **local governments and the solid waste industry** have representation on the mattress recycling organization governing body – whether as voting or non-voting members (Sections 42986 (g) and 42987(a),(1)).

From our experience with the existing product stewardship programs that deal with thermostats, paint, and carpet, we have found that the organizations that design a program in a vacuum without input by the parties currently handling the products, have not performed as their enabling laws intended. As an example, the thermostat law is not working as it should and has a 8% recycling rate 5 years after the bill passed, primarily because the industry is not listening to the advice of locals on the program; the paint bill has had significant issues with contracting with local governments because they started with contract provisions that were unacceptable to most local governments and still most rural counties do not have their paint disposal costs covered; and on carpet, the second submittal of the Stewardship Plan was disapproved by Cal Recycle and uniformly rejected by stakeholders because they found it not working as intended, while the industry sat on \$4 million in fees collected and while watching two California recyclers go out of business, one of which left a two acre pile of carpet stacked two stories tall for the state to clean up!

2. Provide for reimbursement of local government and/or solid waste facility operator costs associated with participation in the program.

For local governments who today, many of which still do not have a contract with PaintCare to cover the paint recycling costs, this is the key issue. This bill needs to be clear that the same situation that has happened with paint will not happen with mattresses where the program does not cover their costs while the industry is collecting fees from the public to help cover such costs.

3. Clarify that the recycling goal to be set by Cal Recycle (Section 42987.5 (a),(1)(B)) is in fact an enforceable performance metric and not a vague goal. Furthermore, we believe that the mattress recycling organization should be in full, not simply “substantial” compliance with these goals and possibly provide exigent circumstance relief.

Lack of clarity on this key point will almost ensure legal challenges, clean-up legislation, or result in a program that does not perform as intended.

4. Shorten the new April 2020 compliance deadline as the first time for holding the mattress recycling organization accountable for its performance.

Again, our experience with the existing thermostat, paint, and carpet programs would justify having some earlier compliance benchmarks to ensure that the program is put – and kept – on track sooner rather than later. The carpet program had significant problems in just two years! Without earlier accountability and oversight, this program could be very detrimental to existing California businesses in refurbishing and hauling of mattresses with no policy tool to correct the problems.

5. Close a significant loophole in the definition of mattress retailers in 42986(e)(b)(2) that would otherwise relieve a large number of mattress distributors from the requirements of this legislation;

If this loophole is not filled, it will ensure that the program is chronically underfunded and unable to recycle all mattresses. In addition, it will create in law a change in the definition of “producer” which goes against the Cal Recycle EPR policy, and EPR policies in Canada and around the world. This would not help to “harmonize” rules across continents which industry wants.

One last issue that is confusing to us is that it is unclear why the drop-off and reimbursement provisions in section 42987.1(o) 1 and 2 were amended to include the limitation on solid waste facilities “that are permitted to accept mattresses”.

In addition to all these programmatic concerns, we remain concerned that SB 254 contains a visible fee imposed on the consumers at the point of sale. This funding mechanism not only diminishes any incentive to design a greener product that is inherent in internalizing the costs associated with end-of-life management as simply a cost of doing business, but it evokes Proposition 26 with its 2/3 vote requirement.

We want to support SB 254 and hope that you will consider these amendments in the spirit they are given – to simply ensure the program will work well.

Please do not hesitate to contact anyone of the undersigned if you or your staff has any questions.

Respectfully, the signers:

Cheryl Cox, Mayor, City of Chula Vista

Paul Philleo, Director, Department of Waste Management & Recycling, County of Sacramento

Heidi Sanborn, California Product Stewardship Council

CC: Caroll Mortensen, Director of Cal Recycle
Assembly Appropriations Committee Chair Mike Gatto and Members