

**SURFRIDER**  
FOUNDATION

**ENVIRONMENTAL LAW INSTITUTE**

**SUMMER SCHOOL 2021**

**LAW AND POLICY OF PRODUCTS REGULATION**

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# THE SURFRIDER FOUNDATION

is dedicated to the protection and enjoyment of the world's ocean, waves and beaches for all people through a powerful activist network.



# Plastics in the Water: A Growing Dilemma

Plastic pollution is the largest source of marine debris.

- 11 million metric tons of plastic pollution end up in the ocean every year.
- Enough plastic ended up in the ocean in 2010 to equal the weight of nearly 90 aircraft carriers.
- Larger plastics can damage or harm marine life by choking or entanglement.
- Microplastics can absorb harmful pollutants like pesticides, dyes, and flame retardants, only to later release them in the ocean.



# SOURCES OF MARINE PLASTIC POLLUTION

## WASTE AND LITTER FROM LAND

- Wastewater and urban runoff
- Rivers and waterways
- Beaches
- Wind

## NATURAL DISASTERS

- Severe floods and high tide events
- Tsunamis
- Hurricanes

## MARITIME ACTIVITIES

- Dumping from ships and platforms
- Lost cargo
- Fishing and aquaculture
- Recreation
- Oceanographic research



Los Angeles River Long Beach, CA  
Rick Loomis, LA Times





# ECOLOGICAL IMPACTS

## WIDE RANGE OF HAZARDS

- Suffocation
- Starvation
- Entanglement
- Lacerations/severe cuts
- Reduced fitness, less able to adapt
- Extremely slow breakdown rate



## MICROPLASTICS

- Replacing plankton at the base of the food chain
- High toxicity (PCB's, Mercury, PBTs)
- Bioaccumulation & biomagnification
- Coral polyp damage
- Shifting temperature of sediment, impacting sea turtle development
- Neurotoxin & behavioral impacts to fish
  - Passing blood/brain barrier



# Plastic waste inputs from land into the ocean in 2010

The 192 countries with a coast bordering Atlantic, Pacific, and Indian oceans, Mediterranean and Black seas produced a total of 2.5 billion metric tons of solid waste. Of that, 275 million metric tons was plastic, and an estimated 8 million metric tons of mismanaged plastic waste entered the ocean in 2010.

**270**  
million metric tons  
Global plastic production\*

**275**  
million metric tons  
Total plastic waste

**99.5**  
million metric tons  
Coastal plastic waste

**31.9**  
million metric tons  
Coastal mismanaged plastic waste

12.7  
4.8

**8**  
Million metric tons of plastic waste goes into the ocean

6,350-245,000 metric tons\*\*

Estimated mass of plastic waste floating at the ocean surface

Generated by 2 billion people within 50 km (30 miles) of the coast

## Mitigation options:

Reduce plastic in waste stream

Improve solid waste management infrastructure

Increase capture

\*Plastics Europe, "Plastics—the Facts 2013" (2010 data)

\*\*Cözar et al., 2014; Eriksen et al., 2014

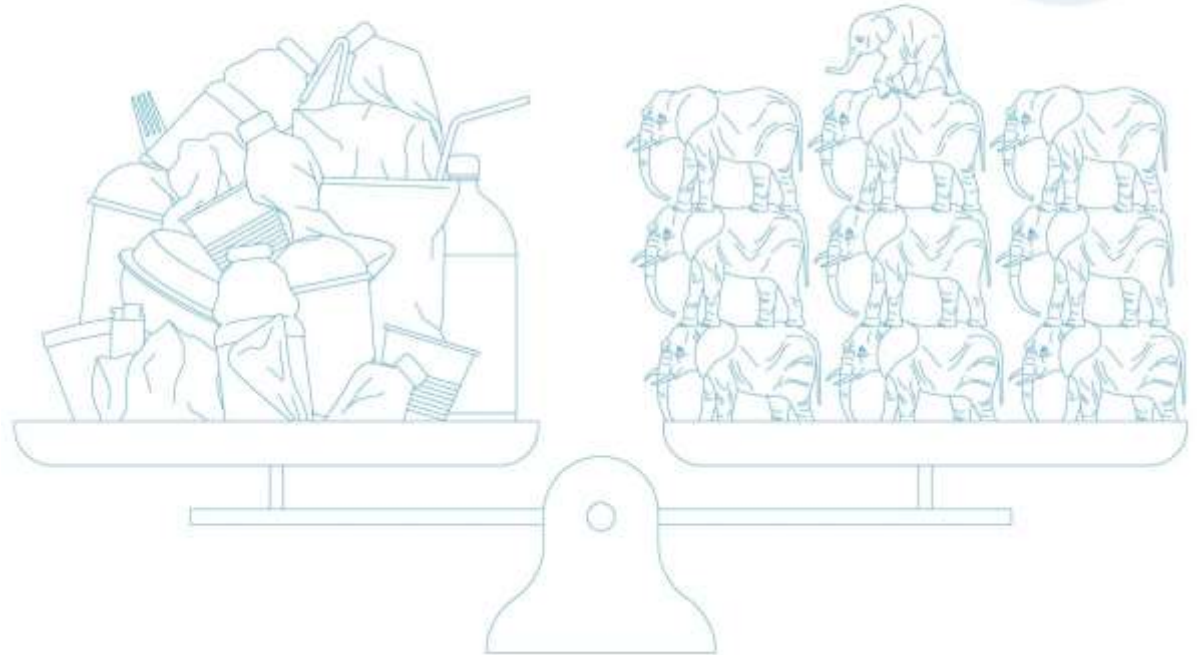
# Plastic Waste: A Growing Dilemma

- The U.S. is the number one producer of waste.
- Based on current ocean pollution rate estimates, roughly the equivalent of one garbage truck full of plastic is dumped into the ocean every minute worldwide.

**320 Million** Metric Tons Of American Waste Produced In 2016

**13%** Total Waste Produced Was Plastic

The amount of plastic waste produced by Americans in 2016 was equal to the weight of 9.7 Million Male African Elephants.



# PLASTICS LITIGATION





# PLASTICS LITIGATION – CLEAN WATER ACT

## CWA – Nurdles and 303(d)

- Texas Formosa Plastic lawsuit - Point Comfort discharged billions of plastic pellets into Lavaca Bay and Cox Creek
- Formosa Plastics Corp. agreed to pay \$50M to settle the lawsuit and comply with “zero discharge” of plastic and clean up of existing
- Hawaii lawsuit - Center for Biological Diversity, Sustainable Coastlines and Surfrider Foundation sued to require consideration of plastic as a pollutant in 303(d) impaired water body listing
- Kamilo Beach and Tern Island waterbodies added to the list and will require TMDLs to be developed and enforced for those areas



PHOTO: COURTESY OF CENTER FOR BIOLOGICAL DIVERSITY



# PLASTICS LITIGATION – RISE St. JAMES

## Environmental Justice

- Large petrochemical complex proposed for St. James Parish, Louisiana
- Jan. 15, 2020 – federal lawsuit for failure to disclose the environmental damage and public health risks of the plastic facility
- Filed by the Center for Biological Diversity on behalf of RISE St. James, Louisiana Bucket Brigade, and Healthy Gulf
- Challenging the Army Corps permit under National Environmental Policy Act, National Historic Preservation Act, Clean Water Act and Rivers and Harbors Act
- Preliminary injunction filed in July led to agreement for temporary cease of construction



PHOTO: COURTESY OF CENTER FOR BIOLOGICAL DIVERSITY



# PLASTICS LITIGATION – Other

## Misleading Consumers, Product Labeling, Nuisance

- Keurig Cup – labeling lawsuit; functionally not recyclable; class certified on 9/21/20
- Cindy Baker v. Nestle – false advertising and several other causes of action; challenging claims made for Nestle Pure Life bottle due to microplastics found in bottled water; voluntary dismissal in 2/1/19
- Earth Island Institute Litigant
  - February 2020 nuisance case against 10 large food and consumer product companies (including Coke, Nestle, Proctor & Gamble); based on beach cleanup data; calls out misinformation re: recyclability
  - June 2021 false and deceptive advertising claim vs. Coca Cola in DC Superior Court under DC's Consumer Protection Procedures Act



# PLASTICS LEGISLATION





# PLASTICS: POLICY APPROACHES

\*Record of Regulation in CA: First Bag Ban, First Straw Law

\*Bag bans in 11 states (CO the latest)

\*Foam bans in 8 states (WA & CO the latest)

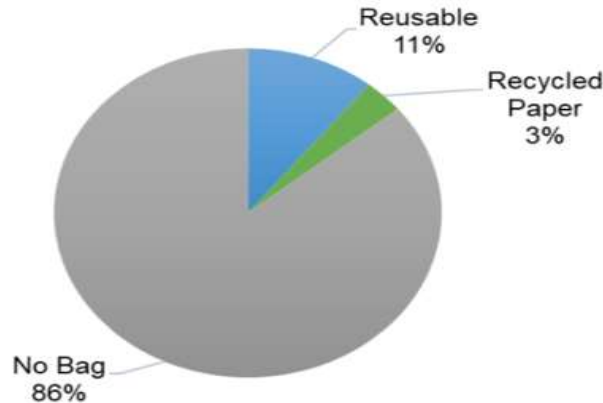
\*Comprehensive Legislation & Federal Legislation



# REGULATION: MOMENTUM OF PLASTIC POLLUTION BANS

- + Increasing awareness and coordination to address plastic pollution at multiple levels
- + Localities learning from each other to enact local ordinances
- + Effectiveness data shows that reusable bag ordinances and other plastics legislation is reducing bag use

## CALIFORNIA BAN BAN RESULTS



# PLASTICS LEGISLATION – STATE PREEMPTION

## BAG LAWS ACROSS THE COUNTRY

### MAP KEY

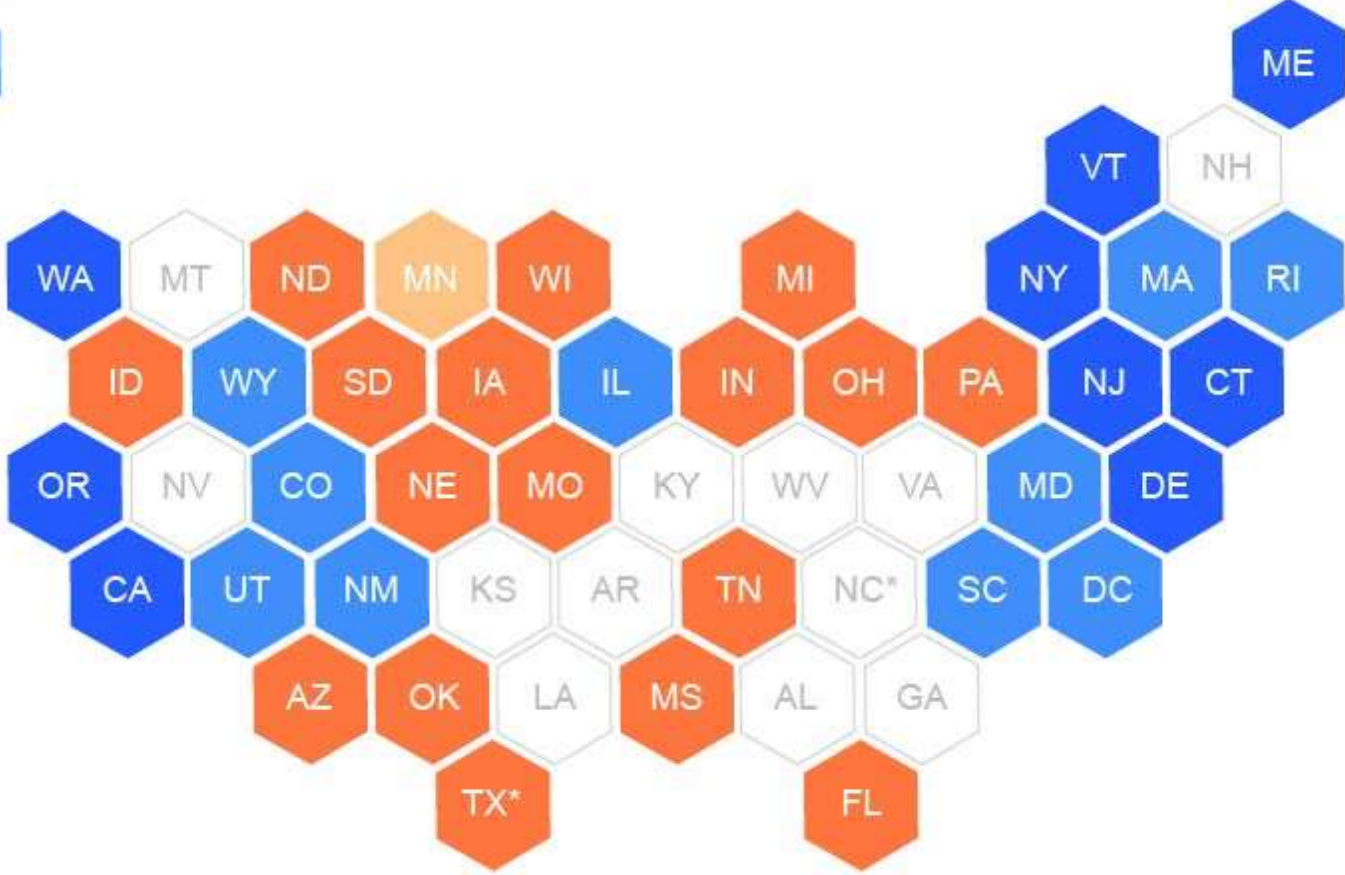
-  statewide bag laws
-  states with locally adopted bag laws that aren't preempted
-  state preemption on bans only (MN only)
-  state preemption

\*notes: HI has a de facto state law because all inhabited counties have local bag laws.  
TX preemption is based upon litigation over an existing statute.  
NC state pilot project for the Outer Banks was repealed.

Map developed by Korin Tangrekul for PlasticBagLaws.org  
Last updated February 13, 2021.

AK

ME



# Sustainable Product Packaging in Maine

**On July 12, 2021, Maine became the first U.S. state to pass an extended producer responsibility for packaging law.**



- This new Maine law requires the DEP to start the rulemaking process in 2023 and has big corporations reimburse towns for the cost of managing wasteful packaging material.
- A new stewardship organization will be created to administer the program and track progress.
- Producer fees are based on amount and type of packaging they sell in ME; will reimburse cities
- Participating cities will have to take standard list of recyclables
- Some funds for waste reduction, education, infrastructure
- It will be less expensive for producers to use less and non-plastic materials that are ocean-friendly, and this will also result in greater environmental justice.





# 2021 CALIFORNIA STATE LEGISLATIVE SESSION

- AB 1276 - Foodware Accessories Upon Request
- AB 881 - Mixed Plastic Waste Export Reform, transparency
- SB 343 - Truth in Recycling Labeling required for recycling
- AB 962 - Returnable Bottles system creation
- AB 1371 - E-Commerce packaging phase out



# 2021 CALIFORNIA STATE LEGISLATIVE SESSION – HONORABLE MENTION

- **AB 661 (Bennett) – CA Buy Recycled.** Requires state agencies to adhere to the same minimum content standards for procurement as private industry
- **AB 478 (Ting) – MRC.** Sets minimum recycled content requirements for plastic thermoform food containers
- **AB 818 (Bloom) – Wipes.** Requires certain disposable wipes to be labeled with the phrase “Do Not Flush” and prevents flushability claims
- **AB 1201 (Ting) – Compostability.** Must meet CalRecycle compostability criteria for label
- **AB 622 (Friedman) – Microfibers.** Requires all new washing machines sold in California to include a microfiber filtration device by 2024
- **AB 580 (Hueso) – Plastic in Roads (OPPOSE)**



# PLASTIC POLICY SOLUTIONS – LOCAL AND FEDERAL

- Local Laws – successful LA ordinance on Earth Day; Laguna Beach followed; #SkipTheStuff
- Break Free From Plastic Pollution Act – first comprehensive federal bill to tackle plastics; includes polluter pays, single-use plastic bans, moratorium on new plastic plants, ban on export or re-export of trash to developing countries



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# FEDERAL BREAK FREE FROM PLASTIC POLLUTION ACT

Components of the legislation include:

- Obligations for producers (a.k.a Extended Producer Responsibility)
- National deposit requirement on beverage containers
- Carryout bag fee
- Ban on certain plastic products (lightweight plastic carryout bags, cups and lids, cotton buds, cutlery, plates, straws, snack packaging and drink stirrers)
- Ban on expanded polystyrene in food-ware, disposable coolers, and shipping packaging
- Requirements that certain products be made out of 100% recyclable materials and be made from a significant percentage post-consumer recycled content
- Creates a federal fund to ensure resources are available for pollution reduction, remediation programs, and innovation research
- Creates a mechanism whereby states lose funding from the federal fund if they adopt preemption laws that prohibit local governments from implementing more aggressive measures to reduce plastic products





# REGRETTABLE ALTERNATIVES

- Thicker Bags
- Lining with PFAB
- Plant-Based and “Sustainable” Products

Greenwashing has become prevalent over the years because consumers are demanding more sustainable alternatives. Biodegradability and compostability claims are not standardized. Not all products are made the same and there are complexities with these terms.

Generally, **compostable** means that a plastic product will measurably break down into its benign natural components within an established timeframe, but only in a specific controlled environment.

The term **biodegradable** means that a plastic product can break down into its individual natural components over time, but the exact conditions and timeframe are not specified (meaning it could still take hundreds of years).



# REGRETTABLE ALTERNATIVES: BIOPLASTICS

Problems with bioplastics and similar alternatives:

- Bio-based plastics can be structurally identical to petroleum-based plastics, and if designed in this way, can last in the environment for the same period of time as petroleum-based plastic, resulting in more microplastic pollution.
- Improper disposal of these products can also cause more problems:
- When landfilled, can release a greenhouse gas with 87 - 105 times greater global warming potential than CO<sup>2</sup>.
- Contaminates recycling stream and commercial composting.
- Bioplastics are often just as toxic as traditional plastics.



# THANK YOU

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