

Maryland-Delaware Solid Waste Association
a chapter of the



**National
Waste & Recycling
Association**SM

Collect. Recycle. Innovate.

TO: The Honorable Kumar P. Barve, Chair
Members, House Environment and Transportation Committee
The Honorable Malcolm Augustine

FROM: Pamela Metz Kasemeyer
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DATE: March 29, 2023

RE: **SUPPORT ONLY IF AMENDED** – Senate Bill 222 – *Environment – Reducing Packaging Materials – Producer Responsibility*

The Maryland Delaware Solid Waste Association (MDSWA), a chapter of the National Waste and Recycling Association, is a trade association representing the private solid waste industry in the State of Maryland. Its membership includes hauling and collection companies, processing and recycling facilities, transfer stations, and disposal facilities. MDSWA and its members **support only if amended** Senate Bill 222.

Senate Bill 222 proposes to create a framework for what is commonly referred to as “Extended Producer Responsibility” or EPR to address the growing challenges associated with recycling. That is, volatile recycling commodity prices leading to increasing costs to maintain recycling services. MDSWA continues to believe that the most effective approach to addressing current recycling challenges is to focus on initiatives to increase demand for recyclable materials through a focus on market development. We further believe post-consumer minimum recycled content requirements are an essential component to increased demand. However, market development has not been considered sufficient and instead, there is a growing interest in EPR. EPR shifts responsibility for managing recycling to brands, which does not take into account the needs of other stakeholders involved in recycling. Any process that considers management of recycling should consider the needs of each of the stakeholders. To that end, attached is the National Waste and Recycling Association’s policy position on EPR.

While the industry believes that EPR, appropriately structured, has the potential to positively impact current recycling challenges, the framework of an EPR program is critical to its success and, if not properly created and implemented, can result in upending existing recycling systems by creating duplicative and unnecessary programs that have failed to take into consideration current collection, processing and management infrastructure, and the flow of revenues and expenses. To that end, while Senate Bill 222, as amended, is intended to provide a structure for addressing Maryland’s current recycling challenges and includes many of the amendments requested by the industry, the legislation requires two additional amendments if it is to achieve its objectives and not create unintended consequences that undermine the program.

First, the Senate amendments on page 15, lines 11- 21 are critical to ensuring that local jurisdictions retain their current authority to sell their recycled materials to end markets and retain the revenues from those sales. Further, that publicly or privately owned materials recycling facilities or organic recycling facilities retain the authority to determine which entities may use the facility; and that local governments, materials recycling facilities, and organics recycling facilities retain the authority to make decisions regarding infrastructure purchases, including processing equipment. The retention of this amended language is essential to continued industry support. However, MDSWA would suggest that this language requires one further clarification related to protecting a county's authority to contract for recycling services as well as make decisions on infrastructure purchases, including processing equipment. To that end, MDSWA would request the following clarifying amendment:

On page 15, in line 20, after "ON" insert "CONTRACTING FOR RECYCLING SERVICES OR"

In addition, amendment language adopted on the floor of the Senate (see page 33, lines 22-25), which creates a requirement for each local government to file a feasibility plan with the Maryland Department of the Environment that prioritizes the sale of recycled packaging materials back to manufacturers that have a facility in the State, creates not only a tremendously onerous, if not unachievable mandate on local governments but also will serve to significantly undermine the market price that local governments will receive for their recycled packaging materials as manufactures will be able to demand a purchase price that is below market rate. Therefore, MDSWA would request the following amendment:

On page 33, delete lines 22 through 25 in their entirety; and in line 26 strike "3" and substitute "2".

MDSWA applauds the sponsor for his interest in positively addressing recycling challenges in Maryland. MDSWA also appreciates the significant work done by the Senate in amending the legislation to address many of the concerns of stakeholders. However, without the amendments outlined above, especially the deletion of the language on page 33, MDSWA cannot support the legislation.

Extended Producer Responsibility

INTRODUCTION

Challenges with recycling have resulted in increased efforts to pass legislation at both the federal and state level advocating for extended producer responsibility (EPR). While well intentioned, many of these bills fail to address the root of the problems and also overlook existing recycling programs and their achievements.

DISCUSSION

Americans want accessible and effective recycling. They want sustainable products that support the circular economy. However, recycling is struggling. There are five major issues facing recycling right now:

- insufficient demand for some recyclables
- low prices for the combined recycling stream
- consumer behavior challenges
- public concern over plastic in the environment
- inexpensive virgin resources

The last twenty-five years of legislative history on recycling has been focused primarily on creating supply – without consideration of adequate end markets. Given that, our recycling system has been set up to continuously generate material even when demand falls and prices drop. Any legislation that proposes to address recycling issues need to first focus on correcting this problem by incentivizing the demand for recyclables, rather than continuing to focus only on adding supply.

Demand is key!

Until 2018, China's growing economy provided demand for recyclables from across the globe, including a significant portion of America's recyclables. This material was not dumped on China; rather Chinese companies paid to acquire these materials as feedstock to produce the products and packages that they sold to the U.S. and other countries. However, when the Chinese government banned some of the materials, demand for mixed paper and mixed plastics fell and the prices for these commodities plummeted accordingly. As their quality requirements and import licenses for cardboard have constricted, this market option has declined as an option for recyclables.

Recyclables can continue to be collected and sorted – however, every seller needs a buyer. Without end markets, material will not be recycled. Recycling legislation can create demand by requiring *packaging to have post-consumer recycled content*. This

will spur demand for more material, increasing the value of recyclables, strengthen the domestic recycling market, and help offset the cost of recycling.

Low prices

Historically, the commodity value from municipal recycling programs offset much of the cost of processing the material for sale; and in some case, municipalities saw a net benefit from the sale of recyclable commodities. However, when the markets for recyclables declines prices drop - sometimes to negative levels. Because paper is 60% of the curbside recycling stream, the price of paper has a high impact on all recycling programs. Increased demand for paper, as well as plastic and other materials, will stabilize prices making recycling sustainable in municipalities struggling with increased costs and unable to find markets for their materials.

Consumer behavior

Reducing contamination will improve recycling. This can be done by harmonizing recycling lists, reducing confusion, providing feedback to consumers through education and cart tagging, and providing clear and accurate labeling on packaging and recycled materials. Materials need to be truly recyclable. The myth that recycling is free of charge needs to be combated and consumers must understand that there is a true cost for recycling that is not mitigated by commodity values alone.

Public pressure associated with plastic waste in the environment

Ocean plastics are predominantly from developing countries with inadequate infrastructure. Most National Waste & Recycling Association (NWRA) members sell residential plastics domestically and many no longer export plastic recyclables. The Alliance to End Plastic Waste estimates that more than 90% of ocean debris originating from rivers come from just ten rivers - eight in Asia and two in Africa. Ideally, municipal plastic recyclables should only be exported to developed countries to reduce the potential of mismanagement of exported material.

NWRA POSITION

In order to address the challenges outlined above, NWRA prefers efforts focused on increasing demand for recyclable materials to allow market forces to incentivize recycling. Increased use of post-consumer content is an essential component to increased demand. In circumstances where these efforts are not sufficient to increase demand, EPR may be considered. When EPR has been proposed, NWRA supports the following:

1. Recycling legislation should seek to support and invigorate existing recycling systems by strengthening them rather than upending them with duplicative and unnecessary programs. Such legislation should focus on investment in infrastructure and incentives to create new markets for recycled materials.

2. Recycling legislation should consider how to improve end market demand focused on inclusion of incentives for use of post-consumer materials. This extends beyond processing and mills and includes the products and goods we purchase and use every day. Minimum content requirements should be established based on material type.
3. Federal, state, and local governments should incorporate post-consumer materials in their purchase requirements where appropriate.
4. State and local governments should retain control over their recycling programs. Local stakeholders understand the needs and complexities of their communities and are the most adept at finding solutions.
5. Producers should assume responsibility for their packaging by considering the end-of-life when designing packaging. Packaging should be designed to promote recycling and sustainable outcomes.
6. The cost of EPR should be borne by the product manufacturers/brands.
7. The preferred model for EPR should be as a Stewardship Responsibility Organization (SRO) system that is inclusive of the recycling supply chain. The non-profit SRO should be made up of equal representation state government, local government, recycling collectors, recycling processors and producers/brands. This is critical to ensure consideration of the entire value chain. The SRO should distribute funds to local governments to support recycling programs.
8. State legislation should place responsibility on the SRO to improve recycling by harmonizing lists, encouraging investments in end markets for materials, coordinating education and enforcement, supporting the improvement of existing collection and processing infrastructure, and supporting litter cleanup.

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