



March 29, 2023

Chair Kumar P. Barve
Environment and Transportation Committee
Maryland House of Delegates
6 Bladen St.
Annapolis, MD 21401

**RE: SB 0222 – An Act Concerning Reducing Packaging Materials –
Producer Responsibility.**

Dear Chair Barve and Members of the Environment and Transportation Committee:

Thank you for the opportunity to provide input on Senate Bill 0222, An Act Concerning Reducing Packaging Materials – Producer Responsibility. This letter is submitted on behalf of Beyond Plastics and Just Zero. **Our organizations strongly oppose this bill.**

Beyond Plastics is a nationwide project that pairs the wisdom and experience of environmental policy experts with the energy and creativity of grassroots advocates to build a vibrant and effective movement to end plastic pollution.

Just Zero is a national environmental non-profit advocacy organization that works alongside communities, policy makers, organizers and others to implement just and equitable solutions to climate-damaging and toxic production, consumption, and waste disposal practices. We believe that all people deserve Zero Waste solutions with zero climate-damaging emissions and zero toxic exposures.

The details matter when establishing an effective producer responsibility for packaging law. SB 0222, as amended, continues to fall short in establishing an effective packaging reduction program due to the following major reasons.

1. The Law Gives Individual Producers Far Too Much Control.

SB 0222 would create a producer responsibility for packaging program that empowers the very companies that created Maryland’s packaging waste crisis in the first place. The law would allow these companies – called “producers” – either individually, or as part of a Producer Responsibility Organization (“PRO”), to develop and submit a producer responsibility plan to the Maryland Department of the Environment (the “Department”). In these plans, the producers would set their own recyclability and recycling rates, post-consumer recycled content requirements, reuse rates, packaging reduction requirements, compost access and rates, contamination reduction rates, and greenhouse gas reduction targets. The producers



would also propose their own fee structure for packaging materials, which is intended to not only provide funding to local governments for recycling services, but also to incentivize the redesign of packaging materials. This is unacceptable.

Producer responsibility does not mean producer control. Producers should be required to meet clear, well-defined requirements as established by the legislation itself, or by the Department, through rulemaking. Without mandatory requirements, producers are free to set goals that would not result in significant packaging waste reduction.

These weak provisions would create a program that amounts to little more than voluntary commitments by consumer brands and packaging manufacturers to improve their packaging design and compensate towns and cities for the waste they create. These companies have made similar voluntary commitments in the past, all of which have led to an increase, rather than a decrease, in single-use packaging and plastic pollution.¹ By empowering these companies to set their own, ultimately unenforceable, voluntary targets, the bill would lead Maryland down a path to even more packaging waste.

Maryland would not put fossil fuel companies in charge of a transition to renewable energy. Why would the state then put for-profit companies in charge of reducing their own waste without mandatory reduction targets, adequate penalties, or strong oversight?

2. The 25% Reduction Target Is Too Low

While we appreciate that the bill focuses on reduction, rather than simply improving recycling, as drafted, the reduction requirement is both too low and employs language that will allow companies to avoid compliance.

According to the OECD, plastic waste is expected to triple by 2060.² For an EPR law to effectively reduce packaging, which makes up 40% of plastic waste, it should require a 50% reduction in packaging over 10 years.³ Cutting packaging in half within a ten-year period is on par with what Governments and Industry are already equipped and capable of according to a 2020 PEW report.⁴ It is also consistent with voluntary commitments being made by some in the packaging industry including Unilever's pledge to cut its non-recycled plastic use by 50% by 2025 and PepsiCo's pledge in

¹ Greenpeace, [Big Brands Fail Their Own Voluntary Commitment to Eliminate Plastic Pollution](#). (Nov. 1, 2022)

² OECD, [Global Plastic Waste Set to Almost Triple By 2060](#).

³ Laura Parker, [Fast Facts About Plastic Pollution](#), National Geographic. (Dec. 20, 2018).

⁴ PEW Charitable Trust, [Breaking the Plastic Wave – A Comprehensive Assessment of Pathways Towards Stopping Ocean Plastic Pollution](#). (July 23, 2020).



September 2021 to cut virgin plastic by 50% across its global food and beverage portfolio by 2030.⁵

Additionally, the bill only requires regulated producers to meet the insufficient packaging waste reduction target, *“to the maximum extent practicable.”* This qualifier is significant as it allows regulated producers to avoid strict compliance with the reduction requirement. This will both further weaken the already insufficient target, while also complicating the Department’s enforcement of the provision.

Moreover, “reduction” is not defined. Therefore, it is unclear if regulated producers will be required to reduce overall packaging or simply reduce the weight of packaging they generate in the state. If reduction is measured by weight alone, the law would allow companies to claim they are reducing packaging while simply light weighting their packaging, which will not reduce the overall amount of packaging generated and disposed of in the state.

3. Allows For a Transition to “Compostable” Packaging Without Protections to Avoid Contamination of Compost Stream.

Composting is an integral part of the development of Zero Waste programs. However, as currently included in SB 0222, the composting provisions will disrupt, not support clean compost programs.

Including “compostable packaging” in the definition of “organics recycling” is counterproductive to packaging reduction efforts and will increase contamination within the organics recycling stream. The law does not define the term “compostable packaging materials” Therefore, the law provides no clarity regarding what types of packaging materials are actually compostable. The proliferation of so-called “compostable packaging” – especially when not sufficiently defined – has significantly increased consumer confusion, as well as contamination in both the recycling and organic recycling stream.⁶

In fact, after a decade of trying to effectively manage so-called “compostable packaging”, leading compost facilities in Oregon halted the acceptance of these products given their inability to break down and the contamination they caused in their compost product which limited the marketability.⁷

⁵ Unilever, [Rethinking Plastic Packaging](#).

⁶ Phoebe Weston, [It’s Greenwashing: Most Home Compostable Plastics Don’t Work, Says Study](#), The Guardian. (Nov. 3, 2022).

⁷ See, Cole Rosengren, [Some Facilities Stop Accepting Compostable Packaging as Contamination Debate Persists](#), Waste Dive. (Mar. 8, 2019). and [A Message from Composters Serving Oregon: Why We Don’t Want Compostable Packaging and Serviceware](#).



While the law may intend to fall back on the Federal Trade Commission’s definition of “compostable,” that definition is both insufficient and not legally enforceable by regulators in the State of Maryland. The Federal Trade Commission’s Green Guides are only legally enforceable by state entities in states which codify it into law, which Maryland has not. Therefore, as currently drafted, SB 0222 allows packaging which does not even meet the weak federal criteria for industrial composting to be labeled as compostable.

Many compostable foodware items use per- and polyfluoroalkyl substances (PFAS) to create a grease- and waterproof barrier.⁸ PFAS is a toxic “forever chemical” that does not break down in the environment. Product manufacturers are not required to disclose if their foodware contains PFAS. It is therefore impossible to ascertain whether a compostable item contains these chemicals and will subsequently contaminate the resulting compost product.

4. The Bill Does Not Address Toxins in Packaging

As currently drafted, SB 0222, does not have any requirements which will phase out toxins in packaging. This is especially concerning in regard to food and beverage packaging. Detected toxins in packaging include neurotoxicants, developmental toxins, endocrine disruptors and carcinogens. If a company wishes to include these chemicals in consumer packaging, they should at least be required to disclose the chemical on the packaging and be willing to state why.

5. The Bill May Allow for False Solutions such as so-called “Advanced Recycling.”

The petrochemical industry is lobbying lawmakers across the country to pass producer responsibility for packaging laws that carve out loopholes for dangerous, climate-damaging technologies that use heat and/or solvents to break down plastics into fuels, chemicals, and toxic waste byproducts.⁹ These technologies, often referred to by the industry as “chemical recycling” or “advanced recycling,” release climate-damaging gases and dangerous toxins like lead, mercury, dioxins, benzene, and styrene.¹⁰ Worst of all, these facilities are disproportionately located in communities of color and low-income communities.¹¹

⁸ Carolyn Wilke, [Chemicals in Biodegradable Food Containers Can Leach into Compost](#), Science News. (June 4, 2019).

⁹ Kevin Budris, [Loopholes, Injustice, & the Advanced Recycling Myth](#), Just Zero, p. 22-27. (Dec. 2022).

¹⁰ Veena Singla, [Recycling Lies: Chemical Recycling of Plastic is Just Greenwashing Incineration](#), Natural Resources Defense Council. (Sept. 7, 2022).

¹¹ Budris, supra note 9, at 28–33.



By referencing an outdated definition of recycling set in statute, and not specifically prohibiting the use of incineration, gasification, pyrolysis and solvolysis and other technologies, this bill will likely allow for plastic burning aka “chemical recycling” or “advanced recycling” to count as plastics reduction or recycling.

The petrochemical industry pushes for these loopholes, and promotes so-called “advanced recycling” more broadly, to deepen our dependence on single-use plastics and single-use plastic packaging.¹² By failing to exclude these technologies from the definition of “recycling” and “post-consumer recycled content,” SB 0222 would reinforce, and help subsidize, toxic technologies meant to increase, rather than decrease, plastic packaging production and waste.¹³

6. Conclusion – The House Committee on Environment and Transportation Should Recommend That SB 0222 Ought Not to Pass.

SB 0222, as currently drafted, would be a step in the wrong direction for Maryland. A producer responsibility for packaging program can help reduce waste and improve recycling, but only if it incorporates mandatory, enforceable requirements, strong oversight by the Department, and explicit language that excludes dangerous technologies like so-called “advanced” or “chemical” recycling. This bill, however, would create a program that empowers the packaging industry that created the plastic pollution crisis in the first place, and that stands to profit from continued runaway single-use packaging production.

Maryland needs real waste reduction solutions. A strong, well-constructed, EPR for packaging program can be one of those solutions. But as written, SB 0222 will only worsen Maryland’s waste crisis. For the above stated reasons, Beyond Plastics and Just Zero strongly oppose the bill.

As national experts on effective and sound policy solutions to the packaging waste and plastic pollution crisis, we are happy to answer any questions you may have. Thank you for your consideration of this letter.

Respectfully submitted.

Judith Enck
President
Beyond Plastics

Peter Blair, Esq.
Policy Director
Just Zero

¹² *Id.* at 23-25.

¹³ *Id.* at 9-10.