



House Environment and Transportation Committee

March 27, 2025

Senate Bill 901 – *Environment – Packaging and Paper Products – Producer Responsibility Plans*

**LETTER OF INFORMATION**

The Maryland chapter of the National Waste and Recycling Association (NWRA-MD) 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. We submit this testimony on Senate Bill 901 as amended by the Senate. We have included comments on the amended bill first, and have included our testimony on the bill as introduced below.

**Comments on Senate Bill 901 As Amended**

NWRA-MD appreciates the work that the Senate sponsor and the Senate Education, Energy, and the Environment Committee put into this bill. The amended Senate Bill 901 represents a substantial improvement over the bill as introduced and contains numerous provisions important to our industry.

We respectfully request an additional amendment to the bill. We request that a new section (VII) be added to page 37 of the bill. The amendment is similar to language adopted in the State of Oregon's EPR law. It is intended to protect the confidential business information of service providers seeking reimbursement under the reimbursement processes established under the bill. The language will ensure that reimbursement rates are established using verified accounting methods and provide impartiality by using an independent third party. Additionally, we are concerned that waste haulers, MRFs, or other service providers may be hesitant to share sensitive financial or operational data due to competitive concerns. This amendment ensures that data provided for rate determination is kept confidential and only used for its intended purpose.

**(VII) IN ESTABLISHING REIMBURSEMENT RATES UNDER THIS SECTION, THE PRODUCER RESPONSIBILITY ORGANIZATION MUST CONTRACT WITH AN INDIVIDUAL OR ORGANIZATION AUTHORIZED TO PRACTICE CERTIFIED PUBLIC ACCOUNTANCY, AS DEFINED IN TITLE 2 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE OF THE ANNOTATED CODE OF MARYLAND. THE INDIVIDUAL OR ORGANIZATION SHALL ENTER INTO A NONDISCLOSURE AGREEMENT WITH EACH PERSON WHO PROVIDES DATA OR INFORMATION REQUIRED TO DETERMINE REIMBURSEMENT RATES UNDER THIS SECTION. THE INDIVIDUAL OR ORGANIZATION SHALL AGGREGATE THE DATA OR INFORMATION RECEIVED FROM ALL PARTIES AND TRANSMIT THE DATA OR INFORMATION TO THE PRODUCER RESPONSIBILITY ORGANIZATION AND THE AGENCY IN A MANNER THAT DOES NOT IDENTIFY THE PARTY WHO PROVIDED SPECIFIC DATA OR INFORMATION. THE DATA OR INFORMATION RECEIVED BY THE INDIVIDUAL OR ORGANIZATION MAY NOT BE USED FOR ANY OTHER PURPOSE. NO PERSON SHALL BE REQUIRED TO PROVIDE DATA OR INFORMATION RELATED TO THE REIMBURSEMENT RATE DETERMINATION UNTIL THE PERSON HAS RECEIVED A NONDISCLOSURE AGREEMENT EXECUTED BY THE INDIVIDUAL OR ORGANIZATION. ANY PERSON AGGRIEVED BY A VIOLATION OF THE TERMS AND CONDITIONS OF A NONDISCLOSURE AGREEMENT MAY INSTITUTE A CIVIL ACTION TO RECOVER DAMAGES.**

Additionally, there is language in the amended version of Senate Bill 901 that NWRA-MD feels is critical to maintain in the bill. Specifically,

- Language on page 24, lines 4-14, which protects the ability of “service providers” in the bill to continue to have certain control over operations and the sale of recycled materials.
- Language on page 38, lines 15 and 16 that ensures that service providers shall retain all revenue from the sale of covered materials.
- Language on page 38, lines 17-26, which enables service providers to charge certain fees for covered services of covered materials.
- Language on page 43, lines 1-11, which protects the confidential information of service providers.

### **Original Testimony as Submitted on Senate Bill 901**

While NWRA-MD has concerns about the effectiveness of extended producer responsibility (EPR) for packaging and the timing of the proposed legislation, we acknowledge the General Assembly’s interest in continuing to advance EPR for packaging in Maryland and offer several suggestions for consideration. We thank the sponsor for his continued efforts to improve recycling in Maryland and we look forward to working collaboratively to ensure any comprehensive packaging EPR legislation adopted in Maryland is as strong as possible, while also protecting our current recycling infrastructure.

First, NWRA-MD and our national organization, NWRA, continue to have reservations about the effectiveness of EPR for packaging. We support improving existing recycling systems and reducing packaging waste, but do not believe EPR for packaging is the best solution. Maryland already has a robust and effective infrastructure for recycling packaging materials. A new EPR for packaging program risks disruption to that successful system and is still a relatively new and unproven concept that has yet to be fully implemented anywhere in the U.S. We are very supportive of EPR approaches for difficult-to-manage items and those that are dangerous if disposed of improperly, such as electronics, batteries, mattresses, paint, and carpet. We also note that some of the biggest challenges facing recycling include contamination, confusion over what materials can be recycled, and inadequate markets for recycled products. These challenges are not addressed by EPR, and we suggest that approaches like post-consumer content standards for materials, including plastic, glass, and paper packaging and containers, should be considered as a simpler alternative. We have included NWRA’s national policy statement on EPR as an addendum at the end of this testimony.

Second, NWRA-MD has concerns with the timing of advancing comprehensive EPR legislation this Session. NWRA notes that we have some concerns about moving forward with legislation while the Advisory Council recommendations and needs assessment required by Senate Bill 222 of the 2023 Session remain pending. Our membership has been actively engaged in the Advisory Council process, and several members have also participated in the needs assessment. It has been our assumption that legislation on comprehensive EPR legislation would be based on the Advisory Council recommendations and the findings of the needs assessment. That information is not yet available, and even if it was, there is limited time to digest it and incorporate it into legislation in the weeks remaining in the 2025 Session.

If comprehensive EPR legislation were to move forward this year, we have several suggestions that can help make this bill a better product. However, we note that in addition to the changes below, there may be additional amendments or suggestions from NWRA-MD members as we continue to analyze the bill. Moreover, we note that additional changes may be necessary as the Advisory Council continues to finalize its recommendations and that changes may be necessary to reflect the needs assessment findings, which have yet to be released.

- The language in SECTION 2, lines 22-25 on page 29 at the end of the bill, should be eliminated. It is unclear what this language is trying to accomplish, but if left in the bill, it restricts what markets recyclers can sell products to and threatens critical revenue needed for our recycling facilities to operate.
- We would request language that protects and anonymizes the business data of companies participating

in needs assessments. The following language was adopted in Minnesota's recently passed EPR law, and we request its inclusion in Senate Bill 901:

- Subd. 6. Participation required; not public data.*
- (a) A service provider or other person 129.20 with data or information necessary to complete a needs assessment must provide the data or information to the commissioner upon request.*
- (b) A service provider or other person providing the data or information may submit a written request to the commissioner that the data or information be classified as not public data. The request must set forth the statutory grounds and the reasons that justify the classification of the data or information as not public data. The commissioner must approve the request if the commissioner determines:*
- (1) the data or information constitutes trade secret information as defined in section 129.28 13.37, subdivision 1, paragraph (b), or sales information;*
  - (2) disclosure of the data or information would tend to adversely affect the competitive position of the service provider or other person, including but not limited to data related to profits, service rates, fees, or business expenses; or*
  - (3) the data or information is otherwise nonpublic data with regard to data not on individuals, pursuant to section 13.02, subdivision 9, or private data on individuals, pursuant 130.3 to section 13.02, subdivision 12.*
- (c) The contractor conducting the needs assessment must aggregate and anonymize the not public data or information, excluding location data necessary to assess needs, received from all parties under this subdivision and must then include the aggregated anonymized data in the needs assessment.*
- (d) The commissioner, any employee of the agency, or any agent thereof, when authorized by the commissioner, may enter upon any property, public or private, for the purpose of obtaining information necessary for completing the evaluation in subdivision 4, clause (2), provided that the entrance and activity is undertaken after reasonable notice and during normal business hours and provided that compensation is made for any damage to the property caused by the entrance and activity.*
- We think it is critical that existing recycling infrastructure and the investments that have been made in it are protected under the bill. Language on page 21, lines 6-10 states that the Producer Responsibility Organization (PRO) must include in Producer Responsibility Plans “THE METHOD FOR EITHER DIRECT INVESTMENTS FOR IMPROVING INFRASTRUCTURE FOR REUSE, ORGANICS RECYCLING, AND RECYCLING IN ACCORDANCE WITH (C)(11) OF THIS SECTION, WITH PRIORITY GIVEN TO THE IMPROVEMENT OF EXISTING INFRASTRUCTURE.” We are unclear what this level of input into infrastructure investments means from the PRO, which is primarily responsible for working with producers and brands to decrease packaging waste. This language should be strengthened to clarify that PROs are not interfering with infrastructure investments made by local jurisdictions and companies in their recycling infrastructure.
  - NWRA-MD recommends removing compostables from the scope of the bill. Compostables present unique challenges and needs to the recycling system that are distinct from other types of packaging.
  - NWRA *supports and requests we retain* the language on page 15, lines 8-10 of the bill that “THIS SUBTITLE MAY NOT BE CONSTRUED TO: (2) PROHIBIT A LOCAL GOVERNMENT OR ANY OTHER ENTITY FROM SELLING RECYCLED MATERIALS OR COMPOST TO END MARKETS AND RETAINING THE REVENUES FROM THOSE SALES. This language is important not to disrupt revenue that supports existing recycling systems.

Again, NWRA-MD has appreciated participating in the ongoing Advisory Council process and the opportunity to provide input into this legislation. We look forward to working with the sponsor as the General Assembly continues to discuss this issue.