



March 9, 2022

The Honorable Kumar P. Barve, Chair
House Environment and Transportation Committee
House Office Building, Room 251
Annapolis, MD 21401

Re: House Bill 1239 – Environment - Plastic and Glass Products - Postconsumer Recycled Content Program

Dear Chair Barve and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed HB 1239 entitled, *Environment - Plastic and Glass Products - Postconsumer Recycled Content Program*, and would like to provide the committee with some information regarding this bill.

HB 1239 would establish a postconsumer recycled content program for the following covered products distributed in Maryland: plastic bags made from film plastic; plastic beverage containers up to 2 gallons in capacity; rigid plastic and/or non-durable plastic containers; plastic trash bags; glass containers for food or beverages; fiberglass building insulation; and any other glass products identified by MDE in regulation. The bill sets minimum levels for postconsumer recycled content for covered products as well as a graduated schedule for increasing those minimum levels over time. Producers of covered products, individually or as part of a representative organization, must annually: register with MDE and pay a \$1,000 registration fee; provide a third-party certification that the product meets the postconsumer recycled content percentage requirements; and provide other specified information regarding product sales within the state. Starting March 1, 2024, a producer may not sell, offer for sale, or distribute a covered product in Maryland unless the producer has registered with MDE and paid the registration fee and, starting March 1, 2026, the covered product meets the postconsumer recycled content requirements established in the bill.

MDE is supportive of initiatives that increase the amount of recycled material used in manufacturing. Postconsumer recycled content programs are aimed at encouraging the development of a circular economy for recyclable materials by increasing the amount of materials collected and recycled, while creating new markets by requiring producers to use a certain percentage of recycled content in new products. MDE is currently working to implement Chapter 289 of 2021, which requires the Department to promote the development of markets for recycled materials and recycled products in Maryland, evaluate the availability of certain markets, and identify Maryland businesses that use recycled materials.

HB 1239 would require MDE to establish a new program at the Department responsible for promulgating any regulations necessary to implement the postconsumer recycled content program, tracking annual registrations and fees, reviewing producer third-party certifications, processing waiver requests, ensuring that products sold in Maryland meet the postconsumer recycled content requirements, and overseeing producers' compliance with the bill. If the registration fees are not enough to cover the Department's cost under this legislation, there

would be no available funds in the State Recycling Trust Fund to cover any additional costs. While MDE currently has adequate and sufficient staff and resources to conduct its mission effectively and efficiently, any additional legislatively-mandated program or regulation, such as this, could hamper our efficiency, force us to divert resources away from current core competencies and could disrupt customer service and/or diminish services.

Additionally, the registration fees provision in § 9-2403 of the bill does not clearly indicate whether each producer pays an annual fee, regardless of use of a representative organization, or whether a single fee paid by a representative organization would cover all producers it represents. This should be clarified.

HB 1239 may also raise due process concerns. Due process requires that a statute “afford individuals a reasonable opportunity to know what is prohibited or required so that they may govern their behavior accordingly” (*Condon v. State of Maryland-Univ. of Maryland*, 332 Md. 481, 499 (1993)). Section 9-2402(a)(2)(iii) of the bill provides that an importer or distributor of covered products is only considered a producer, if the party who would otherwise be considered a producer is outside the jurisdictional reach of the state. This would require an importer or distributor to conduct a legal and factual analysis of the jurisdictional status of each producer, manufacturer, trademark holder and/or trademark licensee of each of the products it imports or distributes to determine if it must register and/or otherwise comply with this bill.

Thank you for your consideration. We will continue to monitor HB 1239 during the committee’s deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", with a stylized flourish at the end.

Tyler Abbott

cc: The Honorable Jen Terrasa
Kaley Laleker, Director, Land and Materials Administration