

**Maryland-Delaware Solid Waste Association**

a chapter of the

**National  
Waste & Recycling  
Association<sup>SM</sup>**

Collect. Recycle. Innovate.

TO: The Honorable Delores G. Kelley, Chair  
Members, Senate Finance Committee  
The Honorable Malcolm Augustine

FROM: Pamela Metz Kasemeyer  
J. Steven Wise  
Danna L. Kauffman

DATE: February 17, 2022

RE: **OPPOSE UNLESS AMENDED** – Senate Bill 292 – *Environment – Packaging  
Materials – Producer Responsibility*

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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 **oppose unless amended** Senate Bill 292.

Senate Bill 292 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. 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. That position is based on the fact that post-consumer content is an essential component to increased demand. However, market development has not been considered sufficient by many stakeholders and there is a growing interest in EPR. 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 292 is clearly intended to provide a structure for addressing Maryland’s current recycling challenges, the legislation, as drafted, requires

additional clarification and amendment if it is to achieve its objectives and not create unintended consequences that undermine the program.

With respect to the proposed needs assessment, the timeframe for completing the needs assessment should be extended and sufficient resources identified to enable the Department of the Environment (MDE) to hire an outside consultant to conduct the assessment. Conducting an accurate and thorough needs assessment is extremely important as it is the basis for the performance goals, establishing infrastructure needs, and other critical elements of a successful program. MDSWA believes the proposed timeframe is insufficient for conducting a comprehensive needs assessment and that MDE does not have the sufficient staff nor resources for conducting the assessment without additional funding and the authority to hire a third party to do the assessment.

MDSWA strongly believes that references to composting should be removed from the legislation. Composting requires different infrastructure and considerations. Adding composting to an EPR program at this juncture adds unnecessary complications to an already complicated system. Similarly, MDSWA requests deletion of 9- 2403 (C) that references a deposit return system. MDSWA strongly opposes bottle deposit programs and believes the reference to a deposit return system creates uncertainty and confusion.

MDSWA also believes that this legislation should only apply to residential recycling and should not include the commercial recycling system. The structural and operational issues related to commercial sector recycling vs residential recycling are significant and Maryland will be more successful in establishing an effective EPR system if it focuses solely on residential. To that end, MDSWA would urge deletion of “businesses, schools, public places” and “and any other entity.” from Section 9-2406 on page 19.

Finally, and most important, there is significant variability across the State relative to how waste and recyclables are collected and managed. That variability will have a significant impact on the structure and effectiveness of an EPR program. Virtually every jurisdiction in the State approaches collection of both waste and recyclables in a different manner. Some jurisdictions provide collection to their residents through public employees, such as Baltimore City. Some jurisdictions contract with private haulers for collection. Some jurisdictions do not provide any collection and residents, or homeowners associations privately contract for collection and/or manage their disposal of waste and recyclables themselves.

The variability in collection and processing frameworks across jurisdictions must be accounted for in the development of an EPR program. It is just one example of a component of the recycling continuum that is not sufficiently reflected in the legislation. While the legislation creates an Advisory Committee with which the Producer Responsibility Organization (PRO) is to consult, there is no requirement for the PRO to consider input from the Advisory Committee. To that end, MDSWA requests the bill be amended to require the PRO to consult with the Advisory Committee prior to submission of a program plan and to all updates and revisions of an approved plan. The Advisory Committee should be required to provide written comments and recommendations to the PRO and the PRO should be required to consider and respond to the Advisory Committee’s input in writing. Further, the PRO should be required to include the

recommendations from and responses to the Advisory Committee in the materials submitted to the Department for plan approval. Without such requirements there is no assurance that the consultation process with the Advisory Council will ensure the essential input of the relevant stakeholders, thereby undermining the successful implantation of an effective EPR program. The requested amendment language is attached.

MDSWA applauds the sponsor for her interest in positively addressing recycling challenges in Maryland and for her tireless effort to address the issues and concerns of many stakeholders over the interim. To that end, MDSWA looks forward to working with the sponsor and other stakeholders to address the issues raised by the industry as well as other stakeholders in order to craft an EPR program that will have the potential to achieve the intended objectives of this legislation. However, without the amendments outlined above and other required amendments that have been raised by interested stakeholders, MDSWA will not be able to support the legislation.

**For more information call:**

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## 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.

*Updated July 2020*

Requested Amendments:

1. On page 10, after line 30, add:

(IV) THE ADVISORY COUNCIL SHALL PREPARE WRITTEN RECOMMENDATIONS REGARDING EACH PLAN AND TO ALL UPDATES AND REVISIONS TO APPROVED PLANS PRIOR TO THEIR SUBMISSION TO THE DEPARTMENT.

(V) A PRODUCEER OR PRODUCER RESPONSIBILITY ORGANIZATION SHALL CONSIDER AND RESPOND TO THE ADVISORY COMMITTEE'S RECOMMENDATIONS IN WRITING.

(VI) RECOMMENDATIONS FROM AND RESPONSES TO THE ADVISORY COMMITTEE SHALL BE PROVIDED TO THE DEPARTMENT AT THE TIME OF PLAN SUBMISSION AND WITH ALL UPDATES AND REVISIONS OF APPROVED PLANS.

2. On page 13, in line 14, strike "AND" and add

(13) DESCRIBE HOW THE WRITTEN RECOMMENDATIONS FROM THE ADVISORY COUNCIL WERE CONSIDERED AND ADDRESSED IN THE DEVELOPMENT OF THE PLAN"; AND; and in line 15, strike (13) and substitute (14).