



**February 24, 2022**

**To: Maryland Senate Finance Committee**

**Re: Follow-up to February 17 Hearing re SB 292 Environment – Packaging Materials – Producer Responsibility**

The Maryland Recycling Network is an association of county and municipal government recycling managers, private sector recyclers, non-profit recyclers and citizens who support recycling. We have direct experience operating recycling and composting programs at the county and municipal government level.

We wish to ensure our position on SB292 regarding extended producer responsibility (EPR) is fully understood. As we noted in both our written and oral comments, we have a long history of supporting EPR for a variety of products. As we also noted, we are not opposed to EPR for packaging and are very willing to work with the author of the bill to ensure it achieves the desired results. However, we believe that SB292 as currently written lacks the necessary clarity and detail to fulfill its purposes and if passed as is would fall far short of its stated goals.

EPR's biggest strength is its ability to help fund local recycling programs. Yet the bill is short on details of how this will be achieved. In this letter, we will briefly spell out the unintended pitfalls in this legislation.

We will start with the costs that are to be covered. These are collection, transportation and recycling (see section 9-24-4(B)(12)). The bill limits reimbursement to 50 percent of the cost of collecting recyclables (see 9-2404(D)(1)(II)1). Collection is the highest cost of a curbside recycling program. Collecting recyclables is labor intensive and recycling trucks are expensive. We do not understand why reimbursement for this key cost is limited to 50 percent. Nor are we sure who decides how "costs" are defined. Is this key element defined by the producer group, by each local government as they see fit, or by MDE? If, for instance, a local government needs to purchase a new collection truck, can the producer group tell it what to buy or place a limit on how much it will pay?

The other costs of transportation and "recycling" (an undefined term but likely to cover processing the collected recyclables into end products for manufacturers) do not have required cost payment percentages (see 9-2404(D)(1)(II)2-4). This could imply, due to the lack of a percentage requirement, that up to 100 percent of those costs are covered. It could also mean the producer group can pay whatever it wants.

It has been suggested the latter option is correct and the producer group will negotiate with local governments as to what costs it will cover. As we noted in our oral testimony, producer groups will want to have predictable costs. Based on experience in Canada and other countries, they are not likely to negotiate with 23 counties, the City of Baltimore and those municipalities who operate their own curbside collection programs much less to renegotiate them on a recurring basis.

Section 9-2404(D)(1)(2) establishes criteria for the reimbursement rate under the above paragraph of the subsection as the population size of a local jurisdiction, the distance to the nearest recycling or composting facility, the commodity value of recycled packaging materials and any socioeconomic or geographic factor as determined by the Department. What does population size mean and result in? It could mean differential rates based on population density, taking into account the higher cost of collection in rural areas, or it could mean something entirely different.

We don't understand the reason for basing transportation cost on the distance to the nearest recycling or composting facility. Six Maryland facilities focus on processing curbside recyclables into products for end markets. Three are county-owned, two are privately-owned and one is a non-profit. Two process "dual stream" recyclables and four process "single stream" recyclables. Two of the three county-owned facilities are limited to recyclables generated within those counties. As a result, several Maryland counties are forced to ship their recyclables out-of-state for processing. It makes no sense to limit a county to the cost to ship to the nearest recycling or composting facility if that facility will not take its recyclables or if a lower processing fee is available further away.

One option that is not in this bill is used in Canada and elsewhere. That is a reimbursement, based on a "reasonable rate", determined either by MDE or the producer group, for those costs. It may or may not cover all of them. Local governments have the option to take the reasonable rate or to operate their programs on their own.

As for the commodity value of the recyclables, does that mean that local governments will be reimbursed for the value of their recyclables and that the three county-owned facilities will retain the revenue from their end markets? For that matter, who approves new processing equipment at those county-owned facilities, the county or the producer group?

Finally, subscription routes, in which individual households contract with a private company to collect their waste and recyclables, are common in rural and exurban Maryland. They are also unique to the United States. The bill should address how this collection method will be addressed.

We believe these important issues must be addressed before further action is taken on this legislation. Too many public officials have testified at Senate and House hearings with high

expectations of having all of their recycling costs covered by an EPR law. As written, this bill will not meet that goal.

We raised our concerns regarding SB292 in our written testimony. Attached to this letter is our written testimony which raises several other issues. In our oral testimony, we noted that EPR for packaging is unique. Like EPR for other products, it is simple in concept. However, the diversity of packaging types, materials, manufacturers and retailers, make EPR for packaging complicated in execution.

We want to work with the Committees and sponsors to create a bill that will provide funding for recycling and composting programs. We believe Maryland must approach this with our eyes wide open. We must take EPR's complexity into account when fashioning this legislation. We cannot afford to fail in this endeavor.

As always, the Maryland Recycling Network stands ready to serve as a sounding board and resource for legislators and others interested in pursuing our mission. Please do not hesitate to contact me via email [phoustle@marylandrecyclingnetwork.org](mailto:phoustle@marylandrecyclingnetwork.org), phone 301-725-2508 or mail - MRN, PO Box 1640, Columbia MD 21044 if you have any questions or would like additional information regarding the above.

Sincerely,



Peter M. Houstle  
Executive Director



**February 16, 2022**

**To: Maryland Senate Finance Committee**

**Re: SB 292 Environment – Packaging Materials – Producer Responsibility**

The members of the Maryland Recycling Network are involved in all aspects of recycling in Maryland. We are community and county recycling coordinators responsible for implementing and overseeing recycling programs, private sector companies that collect and process recyclables, agencies, non-profit organizations, and recycling activists. We promote the “3 R’s” of sustainable reduction, reuse and recycling of materials that are otherwise destined for disposal and the manufacturing and purchase of products made with recycled content. We achieve these goals through education programs, advocacy activities to affect public policy, technical assistance efforts, and recycling market development.

Our Legislation and Policy Committee members have direct experience operating recycling and composting programs at the county and municipal government level. They know the ins and outs of recycling in Maryland. Their experience informs our comments.

#### Recycling in Maryland

According to the most recent data from the Maryland Department of the Environment (MDE), Maryland had a 40.5 percent recycling rate in 2019. While this rate is higher than most states, we can do better. Clearly recycling is stronger in some counties and municipalities than others.

Maryland has a good, but far from perfect, recycling processing infrastructure. Three counties – Baltimore, Montgomery and Prince George’s – own their MRF. Baltimore County operates its facility and sells the recyclables to end markets. Montgomery County and Prince George’s County contract with MES for those two services. All benefit from the currently very strong markets for curbside recyclables. According to the Northeast Recycling Council, the average value of a ton of recyclables from a MRF at the end of September was \$176 a ton. This is almost triple its value from a year ago. While prices softened a little in the winter, I expect strong recycling markets for some time.

In addition, two Maryland MRFs are owned and operated by the private sector. One is in Hagerstown and the other in Elkridge. A not-for-profit MRF operates in Kent County. Private sector scrap dealers also process municipal recyclables in some parts of Maryland.

Due to insufficient nearby processing capacity or nearby MRFs that do not accept out-of-county recyclables, some counties send some or all of their recyclables to MRFs in Delaware, Pennsylvania and Virginia. When its new MRF is up and running, Montgomery County will no longer ship some of its commingled recyclables to Pennsylvania for processing.

MRN and SB 292

The Maryland Recycling Network has consistently supported EPR proposals. One of our priorities for this legislative session is to see the paint EPR bill pass both houses. We have also formed a task force to modernize Maryland’s electronic products EPR law. Unfortunately, we see fundamental flaws in SB292 as written and cannot support it at this time.

**Our key areas of concern include:**

The Needs Assessment (Section 9-1702.2) is absolutely necessary. Essentially it is a statewide solid waste management plan covering waste composition, current recycling and compostable packaging tonnages, the existing collection and processing infrastructure for those materials throughout Maryland, and other issues connected to the operation of these services. Conducting this assessment will be costly.

- Does MDE have the existing staffing and financial resources to undertake the Needs Assessment?
- MDE will need a fiscal appropriation to do this study. The MRN agrees the producer group should pay for the study. However, the assessment is required to be released on October 1, 2023, yet the producer group is not required to be formed until April 2024 and is not likely to have sufficient financial resources until after it is able to collect producer fees.

Local government reimbursement: Numerous provisions of Section 9-2404 refer to reimbursing local governments for costs associated with transporting, collecting, processing and recycling packaging materials. This clearly implies 100 percent cost reimbursement.

- Section 9-2404 (D)(1)(I) provides the method for reimbursement for direct investments for improving infrastructure for reuse, composting and recycling. This provision has no apparent limits on costs that can be reimbursed. Yet, who determines what improvements can be made and specifies the equipment? For instance, if a county wants to buy new equipment for its MRF, does the county or the producer group have the final say on what is bought?
- Section 9-2404(D)(1)(II)1 limits reimbursement for collection to only 50 percent of the cost. Why?
- Sections 9-2404(D)(1)(ii)2, 3 and 4 do not provide cost reimbursement percentages for transporting, processing and recycling costs. The last item, “recycling” costs, is not defined.
- Some municipalities operate collection and transportation regardless of whether or not the county provides this service. The bill needs to clarify if those municipalities will be reimbursed.
- Section 9-2404(D)(2)(III) gives the basis for determining the local government reimbursement rate. (III) is “the commodity value of recycled packaging”. This raises the question of who keeps the revenue from the sale of the recyclables. Is the MRF being paid a fee by the local government for processing and the local government gets back its share of the revenue? If a local government owns its MRF, does it keep the revenue?

Who chooses which processing facility a county or local government can use: Section 9-2404(D)(2)(II), cited above, also gives the distance to the nearest “recycling or composting facility” as a reimbursement factor.

- Is a “recycling facility” a MRF? What if the nearest composting facility does not accept compostable packaging?

Several Maryland counties transport their recyclables to MRFs in Delaware, Pennsylvania or Virginia.

- Will they be reimbursed for the full mileage to these facilities or limited to reimbursement to the closest? In several cases they cannot use the nearest facility because it is a county-owned facility only open to recyclables collected in that county.

Program uniformity: outreach, education and communication: Section 9-2404(B)(10)(III)(1) calls for consistent statewide recycling and composting instructions, taking into account differences among local laws and processing capabilities, while (IV)(2) calls for coordinated outreach across programs to avoid confusion for consumers. The majority of Maryland’s recyclables are collected in “single stream” programs. Montgomery County uses the “dual stream” collection system as do some other communities. Several of the Eastern Shore counties have drop-off centers but they do not always take the same recyclables as do larger, curbside collection programs.

- These two provisions seem to conflict. How can education be consistent when different collection options are used in Maryland?
- Is the intent to eliminate either single or dual stream?

Compostable packaging (Section 9-1702.2(1)(III) and others): The bill only funds composting of this packaging. Anaerobic digestion is an existing option in Maryland that some counties are likely to use as the processing technology for their mixed food and compostable packaging waste. Are anaerobic digestion processing costs for the compostable packaging portion of food waste not covered?

Beverage container deposits: Section 9-2403(C) appears to allow the creation of a separate deposit-return system for container containers and other packages without legislative guidance or approval. Given the impact of beverage container deposits on the existing processing infrastructure and revenues for counties, this should be a subject of separate legislation.

Covered packaging: Section 9-2401(D)(1) & (2) defines packaging materials as essentially any primary, secondary or tertiary package sold or distributed in Maryland that is “intended for the consumer market”.

- This language appears to include much of the corrugated boxes used to ship boxes of products to warehouses and retail stores. Normally these boxes are sold to scrap dealers who then process and sell them. This system has worked very well for decades. Is the bill intended to cover these packages?

Section 9-2401(D)(2)(I-III) Packages subject to regulation by the FDA such as those for certain medical products and by the CPSA such as tamperproof containers are not exempt from this law.

- This could cause regulatory, public health and safety conflicts.

Antitrust exemption: Section 9-2408 provides the producer group with a complete waiver of state antitrust and restraint of trade law.

- Maryland is likely to have more than a thousand producers subject to this proposal based on the experience in Canada (British Columbia with its population of 5,000,000 has 1,200 producers, Quebec with its population of 8 million has more than 3,000). Few of the producers will be actively involved in its operations. The smaller the company, the less likely it will have the time or resources to be involved.
- The producer group will be comprised of the companies that form it. Why should they get an exception to antitrust law and see data and have discussions the other, non-board member

companies, will not be able to participate in? Ontario did not include this exemption in its new law because of competitive problems under the old law.

- The blanket antitrust exemption poses a problem due to the unusual diversity of companies, retailers and product types covered by EPR for packaging.

Advisory Council: Section 9-2405 creates a “Producer Responsibility Plan Advisory Council”.

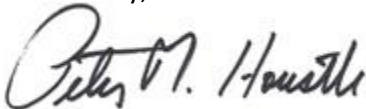
- The Council can provide advice on the draft plan or amendments, receive, and review the final plans and annual reports and make recommendations to MDE. We hope the Advisory Council and its recommendations will be taken seriously by the producer group and MDE and not just be another hoop to jump through.

We understand the desire to keep the bill simple and short. But the questions and concerns raised above are crucially important to local governments and recycling service providers. We do not believe legislation should cover every facet of a packaging EPR law. However, we believe the best EPR packaging law for Maryland will provide guidance for these key issues now instead of waiting for MDE and a producer group to solve them with no legislative guidance. The questions we have raised need answers. Maryland county and municipal governments and the Maryland recycling industry have too much at stake.

The Maryland Recycling Network thanks Delegate Lierman for her interest in improving recycling in Maryland. SB292 offers a starting point in that direction. We look forward to working with SB292’s sponsor and co-sponsors, along with local governments at both the county and municipal level, recycling companies, producers and all parties involved in recycling in Maryland, in creating a more inclusive and comprehensive approach.

As always, the Maryland Recycling Network stands ready to serve as a sounding board and resource for legislators and others interested in pursuing our mission. Please do not hesitate to contact me via email [phoustle@marylandrecyclingnetwork.org](mailto:phoustle@marylandrecyclingnetwork.org), phone 301-725-2508 or mail - MRN, PO Box 1640, Columbia MD 21044 if you have any questions or would like additional information regarding the above.

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