

**Maryland-Delaware Solid Waste Association**  
a chapter of the



TO: The Honorable Brian J. Feldman, Chair  
Members, Senate Education, Energy, and the Environment Committee  
The Honorable Malcolm Augustine

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RE: **SUPPORT ONLY IF AMENDED** – Senate Bill 222 – *Environment – Reducing Packaging Materials – Producer Responsibility*

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 **support only if amended** Senate Bill 222.

Senate Bill 222 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. That is, volatile recycling commodity prices leading to increasing costs to maintain recycling services. 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. We further believe post-consumer minimum recycled content requirements are an essential component to increased demand. However, market development has not been considered sufficient and instead, there is a growing interest in EPR. EPR shifts responsibility for managing recycling to brands, which does not take into account the needs of other stakeholders involved in recycling. Any process that considers management of recycling should consider the needs of each of the stakeholders. 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 222 is 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.

First and foremost, the proposed needs assessment is essential to structuring an effective EPR framework that will achieve the intended objectives and succeed in funding local government recycling programs. MDSWA believes the needs assessment should be conducted in conjunction with/or a part of the establishment of the “Task Force on Recycling Policy and Recycling and Waste Systems in Maryland” reflected in House Bill 109. This approach will provide comprehensive information on the existing state of recycling in Maryland as well as the additional infrastructure and funding requirements necessary to achieve the objectives of an effective EPR program.

MDSWA strongly believes that references to organics and organics recycling throughout the legislation is too broad and outside the intended objectives of this legislation. Presumably, the objective to include compostable packaging in the program is the objective of inclusion of organics in the legislation. MDSWA urges the bill be amended to use the phrase “compostable packaging” as opposed to “organics.” The industry is also strongly opposed to the authorization for a Producer Responsibility Organization (PRO) to establish a bottle deposit program or deposit-return program for other packaging materials. Such programs negatively impact the current collection and processing framework and should not be authorized within this legislation. If there is an interest in considering the establishment of such programs, it should only be done through separate legislation where the unique implications of such programs can be considered. Because bottle deposit programs divert some of the most valuable material away from curbside recycling programs, they will likely increase the cost of recycling for municipalities.

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 differ significantly and Maryland will be more successful in establishing an effective EPR system if it focuses solely on residential.

Senate Bill 222 does not clearly define how funding will flow to invest in infrastructure. There are a number of provisions relative to funding that do not take into account the complexity of the collection and processing of recyclables. There are no provisions clarifying how money will flow to invest in infrastructure other than the PRO develops the method. 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. Furthermore, the bill appears to focus on residential recycling, but the language is not sufficiently clear. Local governments primarily focus on residentially-generated recyclables, including those generated in multi-family housing and in public spaces, although, many manage small amounts of commercially-generated recyclables. The bill will require an amendment to make that clarification.

Further examples of the lack of clarity and failure to understand the complexity of the recycling infrastructure and service provision, are the provisions that limit transportation to the nearest recycling facility. This provision fails to recognize that, in many instances, the closest facility is out-of-state and/or in another jurisdiction that does not accept out-of-County materials. Similarly, there are no provisions for the reimbursement of private haulers and recyclers that may manage some or all of the collection and processing of a local jurisdiction’s waste and recyclables. Additionally, critical to an effective funding framework is the authority for both publicly and privately owned and operated material recycling facilities to market the materials they process to maximize revenues. The legislation should be amended to provide this authority along with a provision that a PRO does not have the authority to build a materials recycling facility for itself or a contractor.

Finally, while the legislation creates an Advisory Council with which the PRO may consult, there is not a binding requirement for following the Advisory Council recommendations. Further, the Advisory Council includes members that are also members of a PRO which is a conflict of interest. The Advisory Council membership should be amended to limit membership to remove this conflict.

MDSWA applauds the sponsor for his interest in positively addressing recycling challenges in Maryland. 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 cannot support the legislation.

## 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*