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AMERIPEN
American Institute for Packaging and the Environment

Testimony
Not in Favor of
Maryland House Bill 342
Plastic Products – Postconsumer Recycled Content Program

House Environment and Transportation Committee
February 22, 2023

Chairman Barve, Vice Chair Stein and Members of the House Environment and Transportation Committee.

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity to submit written testimony on House Bill 342 (Terrasa) to establish certain minimum post-consumer recycled (PCR) content percentage requirements for certain types of plastic packaging. While this can be a policy mechanism to potentially increase the use of recyclable materials by creating new end markets, we believe enshrining specific percentages in statute as a legal mandate can cause significant unintended consequences if not done properly. While we appreciate the intent of HB 342, we are not in favor of it in its current form. We would welcome the opportunity to work with this Committee and stakeholders to address minimum PCR content requirements in a more feasible way than HB 342 currently proposes.

AMERIPEN is a coalition of stakeholders dedicated to improving packaging and the environment. We are the only material neutral packaging association in the United States. Our membership represents the entire packaging supply chain, including materials suppliers, packaging producers, consumer packaged goods companies and end-of-life materials managers. We focus on science and data to define and support our public policy positions and our comments are based on this rigorous research rooted in our commitment to achieve sustainable packaging, and effective and efficient recycling policies. We have several member companies with a presence in Maryland, and many more who import packaging materials and products into the state. The packaging industry supports more than 15,000 jobs and accounts for nearly \$4.8 billion in total economic output in Maryland.

The packaging industry understands the value in recycling and believes the reprocessing of packaging materials reduces litter and marine debris, contributing to the vitality of the American manufacturing sector. As such, AMERIPEN members have made aggressive commitments toward using recycled content in their packaging, including the types covered by HB 342. They are investing across their supply chains in technologies designed to increase the quality of materials collected and processed as well as the avenues for re-use and end markets. We recognize that the health of a recycling system is dependent upon robust end markets, and we believe there is a need for both pull and push mechanisms to encourage the reuse of materials – particularly within the context of global economic market shifts.

While AMERIPEN supports increased recycled content use in packaging, we have concerns with the specific goals and mechanisms used in HB 342 to mandate this and therefore make the following recommendations we believe will help make the bill more feasible.

Recycled Content Mandates – As discussed further below, recycled content mandates can have significant and at times unintended consequences on material markets and can merely shift recycled material use from one product type to another, ignoring the best environmental use for the material. Sufficient supply of high-quality materials is often not available to meet mandatory targets. If recycled content mandates are to be implemented in Maryland, uniformity with existing laws in other states like California, New Jersey, Oregon, and Washington State is critical. ***AMERIPEN therefore encourages the committee to consider the recycled content goals for plastic packaging established in those states rather than simply accept the 25-40 or 50-percent recycled content mandates currently proposed in HB 342. Furthermore, we would encourage inclusion of additional language in HB 342 to require the Maryland Department of Environment (MDE) to undertake a market assessment of available PCR content to determine if the scaling mandates proposed in HB 342 are in fact feasible before they go into effect.***

Food Contact – Food contact packaging must meet strict U.S. Food and Drug Administration (FDA) requirements for quality and sanitization, and manufacturers must achieve compliance for all types of products and containers, depending on various factors such as food acidity, fat content and moisture levels. In many applications it is nearly impossible to use post-consumer recycled content materials and meet these FDA requirements. Furthermore, the FDA’s ability to review and approve “letters of no objection” (LNOs) from manufacturers desiring to use post-consumer recycled content materials for food-grade packaging applications has historically been hindered by limited staff dedicated to this process. **AMERIPEN therefore recommends that the specific requirements for food contact packaging be removed from House Bill 342. If food contact and preservation packaging is not fully removed from the bill, then language should be included to give exemptions – not waivers – when products are unable to get an LNO from the FDA for food contact and preservation packaging and language should be included to implement proper on-ramps for such that recognize actual availability of PCR content.**

Producer Definition – We are very concerned that the language “a person responsible for complying with the requirements under this subtitle” in the definition of producer lacks any clarity on who in the packaging production supply chain would be responsible for compliance. For the packaging covered by HB 342, there might be several sub-component manufacturers supplying packaging elements to a brand name company. **AMERIPEN recommends that the producer be identified as the company that uses covered packaging for a branded product and sells that product into the state. It is critical that the brand-owner be the first entity that has responsibility for compliance with this potential law.**

Waiver Process – we appreciate that HB 342 provides the ability for a company to petition MDE for a temporary waiver from the PCR content requirements. However, there are many reasons why the use of PCR content might not be feasible, and those reasons could equally impact all companies in a packaging sector. **AMERIPEN therefore recommends that “not generally applicable to other producers in similar circumstances” be struck from the waiver language to allow MDE to more broadly approve waivers based on hardships impacting more than just one company.**

Recycling Market Development and Funding – Considering the complex interplay of systems involved in recycling, we believe that Maryland also needs to support policies to increase the efficient collection, flow, and quality of materials back into the marketplace. House Bill 164 enacted in 2021 (Chapter 289) that requires MDE’s Office of Recycling to complete certain tasks to promote the development of recycling markets in Maryland is a big step in the right direction, including the examination of existing funding mechanisms for recycling market development and determination whether additional funding mechanisms are necessary to expand recycling markets in the state. This could significantly help advance the use of PCR content. AMERIPEN fully supports the intent of 2021 Chapter 289 and has in fact been in touch with MDE staff about how we might be able to help support their implementation of this law. **We recommend the Committee explore including additional language in HB 342 to complement and expand the recycling market development work MDE is undertaking, including funding for and investments into new and emerging recycling technologies to support capture and use of additional PCR content. The funds collected via producer registration could be better used on innovation of recycling processes and systems, rather than operational funding.**

Effective Date – When we submitted written testimony in 2022 on similar legislation (HB 1239), we expressed serious concerns on the timing and percentages of recycled content mandated for some covered packaging. We have similar concerns for HB 342, further exacerbated now by some even more aggressive “rates and dates” in the bill for some covered packaging – particularly in later years. We are concerned that January 1, 2027, just over three years from the proposed effective date of the act of October 1, 2023, is extremely aggressive for any far-reaching PCR content mandates such as outlined in HB 342. Supply-chains are particularly complex and ensuring that products can be compliant, depending on the content percentages, will take time and product re-design. AMERIPEN therefore suggests that compliance dates should not occur until five (5) years or more after the act’s effective date for supply chains and demand to respond accordingly.

Unintended Consequences for Recycled Content Markets

As referenced above, recycled content mandates may be effective in directing materials towards end uses, but in doing so, they may distort existing market forces by often merely shifting material to specific uses rather than increasing market supply and availability. Depending on where mandates are implemented, they may or may not provide positive environmental value overall. This would specifically be the case with the 30-50% PCR content mandate for rigid plastic packages in HB 342, where there would likely not be enough rigid resin PCR content supply to meet the mandatory target. Therefore, the desired environmental benefit may not be achieved, and the penalties for noncompliance would be significant.

Recycling is comprised of a series of interconnected systems: collection, sortation, processing and end-markets. Inconsistent collection and sortation decrease the value of processed materials, which limits end market demand and use. AMERIPEN members have made aggressive goals of increasing PCR content use across packaging types and materials, however, HB 342 would supersede those goals with a legal mandate and with timelines the market cannot meet. The purpose of the recycling system is to support manufacturing through resource efficiency. We create jobs from the recycling process by manufacturing products that rely on recycled materials as a feedstock. We reduce the use of virgin materials by re-processing existing materials and, in doing so, strive to mitigate negative environmental impacts.

A study by More Recycling on End Market Demand for Recycled Plastic noted that collection of plastics, particularly that of polyethylene (PE) resins, had a higher collection rate than demand. Digging further into this, the study identified the end markets most capable of absorbing recycled material were not directing those materials back into packaging, but rather into alternative manufactured products such as building materials.

HB 342 assumes that recycled materials should be put back into consumer package materials yet demand for the materials might be best suited for other efficient market solutions rather than misdirection towards packaging. Every product has a different threshold to justify the changes in manufacturing that may be required to incorporate increased post-consumer recycled content. These considerations must be evaluated to explore cost and efficiency trade-offs when mandating recycled content, such as HB 342 considers. Per above, increased flexibility is needed in key provisions of HB 342 to allow recycled materials to have the greatest positive environmental impact.

In conclusion, AMERIPEN recognizes the need to drive the growth of end markets for the reuse of packaging materials, as this plays a significant role in reducing the environmental burden of materials by increasing resource efficiency. We caution, however, that the recycled content mandates in HB 342, as drafted, will not necessarily achieve these stated goals and significant amendments in the bill are needed to make it more feasible. We therefore encourage the Committee not to pass HB 342 as currently written.

AMERIPEN hopes that our suggestions for potential amendments in this testimony provide useful ways to amend HB 342 to make this legislation more feasible and leads to increased recycling, recycled content use and optimal environmental performance in Maryland. We look forward to continuing a dialog with the Committee on this important topic.