



February 22, 2023

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

Re: House Bill 342 - Environment - Plastic Products - Post Consumer Recycled Content Program

Dear Chair Barve and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed House Bill 342 and would like to provide the committee with some information. MDE has met with the sponsor regarding our concerns and will continue to work collaboratively on potential solutions.

HB342 would establish a postconsumer recycled content program for covered products distributed in Maryland. MDE would be responsible for: (1) promulgating any regulations necessary to implement the post consumer recycled content program; (2) tracking annual registrations and fees; (3) reviewing producer third-party certifications, processing waiver requests; (4) ensuring that products sold in Maryland meet the post consumer recycled content requirements; and (5) overseeing producers' compliance with 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.

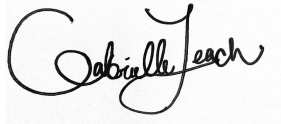
The registration fees provision in § 9-2403 of the bill does not clearly indicate whether each producer pays an annual fee, regardless of use of a representative organization, or whether a single fee paid by a representative organization would cover all producers it represents. This should be clarified.

House Bill 342 may 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.

Finally, MDE has a concern that 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 is supportive of recycling initiatives and supporting recycling markets, the bill does not provide MDE with the funding and additional staff needed if the registration fee is constrained.

Thank you for your consideration. We will continue to monitor HB 342 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-453-3235 or by e-mail at gabrielle.leach@maryland.gov.

Sincerely,

A handwritten signature in black ink that reads "Gabrielle Leach". The signature is written in a cursive style with a large initial "G" and "L".

Gabrielle Leach
Deputy Director
Legislative and Intergovernmental Relations

Cc: The Honorable Jen Terrasa
Tyler Abbott, Director, Land and Material Administration