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**National Waste
& Recycling AssociationSM**

Senate Education, Energy, and the Environment Committee

February 18, 2025

Senate Bill 901 – *Environment – Packaging Materials – Producer Responsibility Plans*

LETTER OF INFORMATION

The Maryland chapter of the National Waste and Recycling Association (NWRA-MD) 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. NWRA-MD is pleased to submit this letter of information on Senate Bill 901.

While NWRA-MD has concerns about the effectiveness of extended producer responsibility (EPR) for packaging and the timing of the proposed legislation, we acknowledge the General Assembly's interest in continuing to advance EPR for packaging in Maryland and offer several suggestions for consideration. We thank the sponsor for his continued efforts to improve recycling in Maryland and we look forward to working collaboratively to ensure any comprehensive packaging EPR legislation adopted in Maryland is as strong as possible, while also protecting our current recycling infrastructure.

First, NWRA-MD and our national organization, NWRA, continue to have reservations about the effectiveness of EPR for packaging. We support improving existing recycling systems and reducing packaging waste, but do not believe EPR for packaging is the best solution. Maryland already has a robust and effective infrastructure for recycling packaging materials. A new EPR for packaging program risks disruption to that successful system and is still a relatively new and unproven concept that has yet to be fully implemented anywhere in the U.S. We are very supportive of EPR approaches for difficult-to-manage items and those that are dangerous if disposed of improperly, such as electronics, batteries, mattresses, paint, and carpet. We also note that some of the biggest challenges facing recycling include contamination, confusion over what materials can be recycled, and inadequate markets for recycled products. These challenges are not addressed by EPR, and we suggest that approaches like post-consumer content standards for materials, including plastic, glass, and paper packaging and containers, should be considered as a simpler alternative. We have included NWRA's national policy statement on EPR as an addendum at the end of this testimony.

Second, NWRA-MD has concerns with the timing of advancing comprehensive EPR legislation this Session. NWRA notes that we have some concerns about moving forward with legislation while the Advisory Council recommendations and needs assessment required by Senate Bill 222 of the 2023 Session remain pending. Our membership has been actively engaged in the Advisory Council process, and several members have also participated in the needs assessment. It has been our assumption that legislation on comprehensive EPR legislation would be based on the Advisory Council recommendations and the findings of the needs assessment. That information is not yet available, and even if it was, there is limited time to digest it and incorporate it into legislation in the weeks remaining in the 2025 Session.

If comprehensive EPR legislation were to move forward this year, we have several suggestions that can help make this bill a better product. However, we note that in addition to the changes below, there may be additional amendments or suggestions from NWRA-MD members as we continue to analyze the bill. Moreover, we note that additional changes may be necessary as the Advisory Council continues to finalize its recommendations and that changes may be necessary to reflect the needs assessment findings, which have yet to be released.

- The language in SECTION 2, lines 22-25 on page 29 at the end of the bill, should be eliminated. It is unclear what this language is trying to accomplish, but if left in the bill, it restricts what markets recyclers can sell products to and threatens critical revenue needed for our recycling facilities to operate.
- We would request language that protects and anonymizes the business data of companies participating

in needs assessments. The following language was adopted in Minnesota's recently passed EPR law, and we request its inclusion in Senate Bill 901:

Subd. 6. Participation required; not public data.

(a) A service provider or other person 129.20 with data or information necessary to complete a needs assessment must provide the data or information to the commissioner upon request.

(b) A service provider or other person providing the data or information may submit a written request to the commissioner that the data or information be classified as not public data. The request must set forth the statutory grounds and the reasons that justify the classification of the data or information as not public data. The commissioner must approve the request if the commissioner determines:

(1) the data or information constitutes trade secret information as defined in section 129.28 13.37, subdivision 1, paragraph (b), or sales information;

(2) disclosure of the data or information would tend to adversely affect the competitive position of the service provider or other person, including but not limited to data related to profits, service rates, fees, or business expenses; or

(3) the data or information is otherwise nonpublic data with regard to data not on individuals, pursuant to section 13.02, subdivision 9, or private data on individuals, pursuant 130.3 to section 13.02, subdivision 12.

(c) The contractor conducting the needs assessment must aggregate and anonymize the not public data or information, excluding location data necessary to assess needs, received from all parties under this subdivision and must then include the aggregated anonymized data in the needs assessment.

(d) The commissioner, any employee of the agency, or any agent thereof, when authorized by the commissioner, may enter upon any property, public or private, for the purpose of obtaining information necessary for completing the evaluation in subdivision 4, clause (2), provided that the entrance and activity is undertaken after reasonable notice and during normal business hours and provided that compensation is made for any damage to the property caused by the entrance and activity.

- We think it is critical that existing recycling infrastructure and the investments that have been made in it are protected under the bill. Language on page 21, lines 6-10 states that the Producer Responsibility Organization (PRO) must include in Producer Responsibility Plans “THE METHOD FOR EITHER DIRECT INVESTMENTS FOR IMPROVING INFRASTRUCTURE FOR REUSE, ORGANICS RECYCLING, AND RECYCLING IN ACCORDANCE WITH (C)(11) OF THIS SECTION, WITH PRIORITY GIVEN TO THE IMPROVEMENT OF EXISTING INFRASTRUCTURE.” We are unclear what this level of input into infrastructure investments means from the PRO, which is primarily responsible for working with producers and brands to decrease packaging waste. This language should be strengthened to clarify that PROs are not interfering with infrastructure investments made by local jurisdictions and companies in their recycling infrastructure.
- NWRA-MD recommends removing compostables from the scope of the bill. Compostables present unique challenges and needs to the recycling system that are distinct from other types of packaging.
- NWRA *supports and requests we retain* the language on page 15, lines 8-10 of the bill that “THIS SUBTITLE MAY NOT BE CONSTRUED TO: (2) PROHIBIT A LOCAL GOVERNMENT OR ANY OTHER ENTITY FROM SELLING RECYCLED MATERIALS OR COMPOST TO END MARKETS AND RETAINING THE REVENUES FROM THOSE SALES. This language is important not to disrupt revenue that supports existing recycling systems.

Again, NWRA-MD has appreciated participating in the ongoing Advisory Council process and the opportunity to provide input into this legislation. We look forward to working with the sponsor as the General Assembly continues to discuss this issue.

ADDENDUM

NWRA POLICY POSITION ON 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 needs 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 its quality requirements and import licenses for cardboard have constricted, the Chinese market 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 cases, municipalities saw a net benefit from the sale of recyclable commodities. However, when the markets for recyclables decline, 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 comes 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 is 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 from 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.

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