April 2, 2025

Chair Korman
Environment and Transportation Committee
Maryland House of Delegates
Room 251
House Office Building
Annapolis, Maryland 21401

Chair Wilson
Economic Matters Committee
Maryland House of Delegates
Room 230
House Office Building
Annapolis, Maryland 21401

RE: Joint Memo of Opposition on SB 901: Extended Producer Responsibility for Packaging and Paper.

Dear Chair Korman, Chair Wilson and Honorable Members of both the Environment and Transportation Committee and Economic Matters Committee:

Thank you for the opportunity to submit this memorandum today. **Beyond Plastics and Just Zero oppose SB 901, which would establish a problematic extended producer responsibility for packaging program (EPR for packaging program).**

Beyond Plastics is a nationwide project that pairs the wisdom and experience of environmental policy experts with the energy and creativity of grassroots advocates to build a vibrant and effective movement to end plastic pollution.

Just Zero is a national environmental non-profit advocacy organization that works alongside to implement just and equitable solutions to climate-damaging and toxic production, consumption, and waste disposal practices.

Currently, five states have adopted EPR for Packaging Laws.[1] Just Zero and Beyond Plastics have both worked with stakeholders in each of these states to enact and develop these programs. We know that strong, well-designed EPR for packaging programs can reduce waste, increase recycling, and require companies to redesign their products and packaging to be less toxic and wasteful.

However, the details are incredibly important. Especially as plastic and packaging industry lobbyists are pushing states to adopt weak EPR bills that don't actually hold them accountable or require them to take actions to address the waste they create. **SB 901 is a textbook weak EPR bill, and we strongly oppose its passage.**

This legislation comes on the heels of Maryland's statewide needs assessment which, among other findings, identified key goals and recommendations for reducing packaging waste and plastic pollution in the state. SB 901 is NOT the mechanism by which Maryland will meet its initial packaging waste and recycling goals, nor will it reduce the state's plastic pollution problem or the public health threats associated with plastic. Additionally, SB 901 lacks key components that are included in the majority of the existing EPR for packaging programs in the U.S.

[1] These states are California, Colorado, Maine, Minnesota, and Oregon.

We oppose the bill for the following reasons:

(1) It does not ensure that the program will reduce waste and increase recycling.
(2) It puts the companies that sell and package products firmly in charge of regulating themselves without sufficient oversight from the state.
(3) It does not prohibit chemical recycling.
(4) It does not protect public health as it fails to address the array of toxic chemicals in consumer packaging.
(5) It wrongly exempts many businesses that generate significant amounts of packaging waste.

I. SB 901 Will Not Reduce Waste or Meaningfully Increase Recycling.

Effective EPR for packaging programs does more than require companies to pay to fund recycling. Instead, they set clear and enforceable performance goals that ensure companies are working to redesign their products and packaging to eliminate waste and increase recyclability. Rather than setting clear performance goals, SB 901 empowers the very companies that have created Maryland's packaging waste crisis in the first place. This is unacceptable.

SB 901 allows regulated companies – called "producers" – to set the performance goals they must achieve.[2] These companies have a clear interest in setting extremely weak performance goals. The state – not the regulated companies – should be setting the benchmarks for success. This is why, except for Colorado, every state that has adopted EPR for packaging laws has had the state set the performance requirements.

Moreover, the performance standards the industry set are not strictly enforceable. Under SB 901, if the performance goals that the companies set are not met, the Department ***may*** (a) require the Producer Responsibility Organization to revise the producer responsibility plan, and (b) impose a civil penalty.[3] Failure to meet the goals of the program should result in automatic action by the state. This should include mandatory penalties and corrective action to ensure the program is brought back into compliance with the goals.

These weak provisions would create a program that amounts to little more than voluntary commitments by consumer brands and packaging manufacturers to improve their packaging design and compensate towns and cities for the waste they create. These companies have made similar voluntary commitments in the past, all of which have led to an increase, rather than a decrease, in single-use packaging and plastic pollution.[4] By empowering these companies to set their own, ultimately unenforceable, voluntary targets, the bill would lead Maryland down a path to even more packaging waste.

Maryland would not put fossil fuel companies in charge of a transition to renewable energy. Why would the state then put for-profit companies in charge of reducing their own waste without mandatory reduction targets, adequate penalties, or strong oversight?

[2] SB 901 Section 9-2505(C)(1)(III).
[3] SB 901, Section 9-2505(J)(5).
[4] Greenpeace, *Big Brands Fail Their Own Voluntary Commitment to Eliminate Plastic Pollution*. (Nov. 1, 2022)

TABLE 1: Performance Standards in U.S. EPR Programs		
State	**Who Sets the Performance Goals**	**What Are the Goals?**
California	The performance goals are set in the statute	1. 100% of all covered material must be recyclable or compostable by 2032.[5] 2. All covered plastic must be recycled at the following rates: - 30% by 2028 40% by 2030 65% by 2032.[6] 3. All covered polystyrene food service ware must be recycled at the following rates - - 25% by 2025 - 30% by 2028 - 50% by 2030 - 65% by 2032.[7] 4. Plastic packaging must be reduced by 25% by 2032. 10% of this reduction must be met by eliminating single-use plastics or transitioning to reusable/refillable packaging.[8]
Colorado	The PRO sets the performance goals	The PRO is responsible for establishing (1) recycling rates, and (2) post-consumer recycled content requirements for certain covered packaging material types.[9]
Maine	The Department of Environmental Protection sets the performance goals through rulemaking	The Department of Environmental Protection is required to establish performance goals for the following categories through rulemaking: (1) recycling access, (2) participation, (3) collection, (4) packaging reduction, (5) reuse, (6) the percentage of packaging that is recyclable or compostable, (7) recycling rates, (8) post-consumer recycled content, and (9) litter reduction.[10]
Minnesota	The PRO and the Department are required to establish performance goals	The Department of Public Health and Environment must establish statewide requirements and the date by which they must be met for the following categories: (1) recycling rates, (2) composting rates, (3) reuse rates, (4) return rates, (5) the percentage of covered material that must be waste reduced, (6) the percentage of post-consumer recycled content.[11]
Oregon	The performance goals are set in statute and by the Department through rulemaking	1. Recycling rates for plastic packaging and food service ware – set in statute. - - 25% by 2028 - 50% by 2040 - 75% by 2050.[12] 2. The Department of Environmental Quality is responsible for establishing statewide recycling contamination reduction goals.

[5] See, Cal. Env. Code §42050(b).
[6] See, Cal. Env. Code §42050(c).
[7] See, Cal. Env. Code §42057(i).
[8] See, Cal. Env. Code §42057(a).
[9] Colorado Producer Responsibility Program for Statewide Recycling Act, Section 25-17-706 (1)(a).
[10] 38 M.R.S.A. §2146(13)(A)(5)
[11] See, Minnesota Packaging Waste and Cost Reduction Act, Section 12, Subsection 7. [115A.1454].
[12] See, ORS 459A.926 §27(2)(a)(A)-(C).

II. SB 901 Puts Companies in Charge of an Important Waste Reduction and Recycling Program Without Sufficient Oversight by the State.

SB 901 leaves virtually all the key program decisions up to the Producer Responsibility Organization (PRO) without any meaningful oversight from the state. The PRO is an industry-run and industry-funded entity designed to implement the program. Without sufficient oversight from the state, there is a serious concern that the PRO will prioritize cost-cutting over environmental performance. This concern is amplified by the fact that SB 901 does not include mandatory public comment provisions common in all EPR for Packaging programs.

We believe without sufficient checks SB 901 runs the risk of developing a program that

(1) Lacks transparency making it difficult for regulators and the public to track and access program performance.
(2) Does not adequately address the needs of local governments, recyclers, composters, waste haulers, or the public.
(3) Results in fees that are too low to adequately cover the development of recycling and reuse infrastructure.
(4) Allow producers to game the system through underreporting of packaging materials to avoid paying their fair share into the system.
(5) Fails to develop fee structures that drive real packaging redesign.

III. SB 901 Does Not Prohibit "Advanced" or "Chemical" Recycling.

SB 901 does not expressly prohibit "chemical" or "advanced" recycling. This is a significant loophole that will seriously undermine the intent of the program.

Advanced recycling – sometimes called chemical recycling or molecular recycling – refers to an array of technologies that use heat and/or solvents to break down plastics into monomers (the building blocks of plastic), hydrocarbons, fuels, chemicals, and waste byproducts. These technologies include gasification, pyrolysis, depolymerization, solvolysis, methanolysis, and hydrolysis.[13]

According to proponents like the American Chemistry Council, these processes create materials which are used to manufacture new plastic products.[14] The reality of advanced recycling, however, dramatically contrasts with these statements. In practice, advanced recycling means generating pollution, and burning plastic derived fuels and toxic chemicals.[15] The process results in plastics being boiled down into gases, chemicals, tars, oils, and toxic waste byproducts, which are subsequently burned.[16] Little to no new plastics are manufactured.[17] In fact, all of the advanced recycling facilities operating at a commercial scale in the U.S. are using pyrolysis to create and burn

[13] Andrew Rollinson & Jumoke Oladejo, Chemical Recycling: Status, Sustainability, and Environmental Impacts, Global Alliance for Incinerator Alternatives 7–12 (2020).
[14] American Chemistry Council, What is Advanced Recycling.
[15] NRDC, Recycling Lies: "Chemical Recycling" of Plastics Is Just Greenwashing Incineration (2022).
[16] Dr. Veena Singla, Recycling Lies: Chemical Recycling of Plastic is Just Greenwashing Incineration, Natural Resources Defense Council, p. 2. (2022).
[17] *Id.* at 3.

plastic derived fuel.[18] Converting plastic into fuels is not considered recycling by national and international standards.[19]

While proponents argue that ***some*** of the plastic processed at advanced recycling facilities is used to manufacture new plastic products, this is extremely misleading. A report from the Department of Energy found that plastic processed through advanced recycling technologies – specifically pyrolysis and gasification – were rarely used manufacture new plastic products.[20] In fact, only 1 – 14% of the plastic processed at advanced recycling facilities were retained and used to manufacture new plastics.[21] A recent in-dept analysis from ProPublica found that the maximum amount of feedstock produced through pyrolysis that can be used to manufacture new plastic products is 20%.[22] This means if a pyrolysis operator started with 100 pounds of plastic waste, it can expect to end up with 15-20 pounds of reusable plastic.[23] Importantly, this 20% is only achievable under ideal conditions. In general, the process yields significantly lower outputs due to contamination in post-consumer plastics.[24]

In addition to resulting in virtually no recycling, the Department of Energy report also found that these technologies had significant economic and environmental impacts.[25] The study found that the environmental and economic impacts of pyrolysis and gasification are 10 to 100 times worse than using virgin plastics.[26] Additionally, the fuel derived from plastic pyrolysis is extremely toxic. Reports from the U.S. Environmental Protection Agency have found that production of these fuels can emit air pollution that is to toxic, 1 out of 4 people exposed to it over a lifetime could develop cancer.[27]

By failing to exclude these technologies from the definition of "recycling" and "post-consumer recycled content," SB 901 would reinforce, and help subsidize, toxic technologies meant to increase, rather than decrease, plastic packaging production and waste.[28]

IV. SB 901 Fails to Address Toxins in Packaging

SB 901 does not include any provisions that require or at least incentivize companies to reduce or eliminate the presence of toxic chemicals in consumer packaging. Many commonly used substances found in plastic packaging are toxic and linked to an array of health problems including endocrine disruption, heart disease, infertility, and cancer.[29] This is especially concerning regarding packaging

[18] *Id.*
[19] See EPA's 1997 Measuring Recycling: A Guide for State and Local Governments and European Union, Directive of the European Parliament on Waste and Repealing Certain Directives, Pub. L. No. Article 3(17).
[20] Taylor Uekert, et al, Technical, Economic, and Environmental Comparison of Closed-Loop Recycling Technologies for Common Plastics, Department of Energy, ACS Sustainable Chem. Eng. 2023, 11, 3, 965–978.
[21] *Id.*
[22] Lisa Song, Selling a Mirage: The Delusion of "Advanced Plastic Recycling, ProPublica. (June 20, 2024).
[23] *Id.*
[24] *Id.*
[25] Taylor Uekert, et al, Technical, Economic, and Environmental Comparison of Closed-Loop Recycling Technologies for Common Plastics, Department of Energy, ACS Sustainable Chem. Eng. 2023, 11, 3, 965–978.
[26] *Id.*
[27] Sharon Lerner, This "Climate-Friendly" Fuel Comes With an Astronomical Cancer Risk, ProPublica. (Feb. 23, 2023).
[28] *Id.* at 9-10.
[29] Kevin Loria, How Plastic Can Harm Your Health, Consumer Reports (Jan. 2024).

for cosmetics and food and beverages. Tests showing that plasticizer chemicals are contaminating nearly all of our food was recently on the front page of Consumer Reports.[30]

Effective EPR for packaging programs must address the use and presence of these toxic chemicals in packaging materials. New York and New Jersey are considering EPR for packaging bills that would phase out certain toxic chemicals in packaging.[31] California, Maine, and Minnesota, all have provisions in their EPR for packaging programs that incentivize companies to eliminate toxic substances from consumer packaging.[32]

V. SB 901 Unnecessarily Exempts Many Businesses That Generate Significant Amounts of Packaging Waste.

SB 901 includes several unnecessary and problematic exemptions. These exemptions are not generally included in other EPR for Packaging programs and will exempt numerous companies that generate significant amounts of waste.

It is important to understand that any exempted producers will still be selling packaging materials in Maryland but leaving the responsibility of paying for the management of this material to other producers or taxpayers. This is inequitable and contrary to the fundamental rationale behind producer responsibility. Therefore, producer exemptions should be very limited in scope because:

- Exemptions add administrative complications for the program because producers should only be accountable for obligated materials, significant auditing is required to account for exempted materials collected by municipalities.
- Exemptions benefit producers of exempted materials, creating an unlevel marketplace.
- Exemptions make performance measurement challenging (e.g., reduction rates, recycling rates, etc.) as there is no full reporting of the material sold, and significant work is required to audit material collected.

The following exemptions should be removed from the bill

1. SB 901 exempts all mills that use virgin wood fiber in their products.[33]
   The purpose of this exemption is unclear. Wood fiber is not defined in statute. Wood fiber packaging could include an array of packaging materials ranging from paper and cardboard to molded pulp to create trays, egg cartons, or other protective packaging. There is no reason to exclude the producers of this material from the program.

2. SB 901 exempts all paper mills that produce containerboard derived from 100% pre-consumer or post-consumer recycled content.[34]
   While manufacturing containerboard out of pre-and-post-consumer recycled content is admirable, it does not mean the producer should be exempt from the requirements the law. Containerboard is not defined. It could be interpreted to include all cardboard packaging. Exempting these producers does not remove the material from Maryland. Rather,

[30] Lauren Friedman, The Plastic Chemicals Hiding in Your Food, Consumer Repots. (Feb. 2024).
[31] See, New Jersey Senate Bill 3398 and New York Senate Bill 1464
[32] California - Cal. Env. Code §42053(e). Maine - 38 M.R.S.A., § 2146(13)(A)(1)(c). Minnesota - Minnesota Packaging Waste and Cost Reduction Act, Section 14, Subsection 3. [115A.1454].
[33] SB 901 Section 9-2512(P)(2)(iv).
[34] SB 901 Section 9-2512(P)(2)(v).

containerboard waste will still be generated in the state. The exemption simply means the company responsible for the material is not paying to cover the costs of collecting, transporting, and recycling the material. Additionally, the law is already structured in a way to reduce the impacts on companies that are using environmentally friendly packaging materials.

3. SB 901 exempts restaurants, food carts, or similar establishments that: (i) are headquartered in the state, (ii) primarily sell to the public food that is generally intended to be consumed immediately without further preparation, and (c) are not a producers of food serviceware.[35] Providing blanket exemptions for a majority of Maryland-based food services businesses will limit the effectiveness of the program. These businesses generate significant amounts of packaging waste and should be regulated under the program. For instance, any Maryland-based deli, coffee shop, restaurant, food chain, mini-mart, etc. will be entirely exempt from the law. Many of these businesses have the financial means necessary to comply with the requirements of the law. Additionally, the bill already has provisions designed to protect small businesses.[36]

VI. Conclusion

An EPR for packaging program can reduce waste and improve recycling, but only when it incorporates mandatory, enforceable requirements, strong oversight by the state, and explicit language that excludes dangerous false solutions like so called "advanced" or "chemical" recycling. This bill would create a program that empowers the companies that are responsible for the plastic pollution crisis in the first place and stand to profit from continued runaway single-use packaging production.

Maryland needs real waste reduction solutions. A strong, well-constructed, EPR for packaging program can be one of those solutions. But as written, SB 901 will only worsen Maryland's waste crisis. For the above stated reasons, Beyond Plastics and Just Zero oppose the bill.

As national experts on effective and sound policy solutions to the packaging waste and plastic pollution crisis, we are happy to answer any questions you may have. Thank you for your consideration of this letter.

Respectfully submitted,

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President	Policy and Advocacy Director
Beyond Plastics	Just Zero

[35] SB 901 Section 9-2512(P)(2)(vi).

[36] The law exempts any person that in their most recent fiscal year (1) generated less than 1 ton of packaging or paper waste, or (2) earned less than $2,000,000 in gross revenue. See SB 901 – Section 9-2505(J)(5)