

Testimony in OPPOSITION
to
H.F. 3577
in the
Minnesota Environment and Natural Resources Finance and Policy Committee

February 20, 2024

Dear Chair Hansen, Vice-Chair Jordan, and Members of Environment and Natural Resources Finance and Policy Committee,

The Flexible Packaging Association (FPA) is **opposed to the current MN HF3577**, which would establish an Extended Producer Responsibility program in the State of Minnesota but stands ready to strongly support an amended version.

I. Background on FPA & Flexible Packaging

I am John Richard, Director of Government Relations at FPA, which represents flexible packaging manufacturers and suppliers to the industry in the U.S. Flexible packaging represents \$42.9 billion in annual sales; is the second largest, and fastest-growing segment of the packaging industry; and employs approximately 85,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products.

These are products that you and I use every day—including hermetically sealed food and beverage products such as cereal, bread, frozen meals, infant formula, and juice, as well as sterile health and beauty items and pharmaceuticals, such as aspirin, shampoo, feminine hygiene products, and disinfecting wipes. Even packaging for pet food uses flexible packaging to deliver fresh and healthy meals to a variety of animals. Flexible packaging is also used for medical device packaging to ensure that the products packaged, like diagnostic tests, IV solutions and sets, syringes, catheters, intubation tubes, isolation gowns, and other personal protective equipment maintain their sterility and efficacy at the time of use. Trash and medical waste receptacles use can liners to manage business, institutional, medical, and household waste. Carry-out and take-out food containers and e-commerce delivery, which

became increasingly important during the pandemic, are also heavily supported by the flexible packaging industry.

Thus, FPA and its members are particularly interested in solving the plastic pollution issue and increasing the recycling of solid waste from packaging. Unfortunately, we do not believe HF3577 as written will provide Minnesotans with a durable, effective EPR program.

Flexible packaging is in a unique situation as it is one of the most environmentally sustainable packaging types from a water and energy consumption, product-to-package ratio, transportation efficiency, food waste, and greenhouse gas emissions reduction standpoint, but circularity options are limited. There is no single solution that can be applied to all communities when it comes to the best way to collect, sort, and process flexible packaging waste. Viability is influenced by existing equipment and infrastructure; material collection methods and rates; volume and mix; and demand for the recovered material. Single-material flexible packaging, which is approximately half of the flexible packaging waste generated, can be mechanically recycled through store drop-off programs, however, end markets are scarce. The other half can be used to generate new feedstock, whether through pyrolysis, gasification, or fuel blending.

Developing end-of-life solutions for flexible packaging is a work in progress, and FPA is partnering with manufacturers, recyclers, retailers, waste management companies, brand owners, and other organizations to continue making strides toward total packaging recovery. Some examples include The Recycling Partnership (TRP); the Materials Recovery for the Future (MRFF) project; the Hefty® ReNew® Program; and the Consortium for Waste Circularity. All of these programs seek to increase the collection and recycling of flexible packaging. Increasing the recycled content of new products will not only create markets for the products, but will also serve as a policy driver for the creation of a new collection, sortation, and processing infrastructure for the valuable materials that make up flexible packaging.

It is FPA's position that a suite of options is needed to address the lack of infrastructure for non-readily recyclable packaging materials and promotion and support of market development for recycled products is an important lever to build that infrastructure. FPA also supports well-crafted EPR that can be used to promote this needed shift in recycling in the U.S. In fact, FPA worked with the Product Stewardship Institute (PSI) and jointly drafted a set of principles to guide EPR for flexible packaging

(<https://www.flexpack.org/end-of-packaging-life>). The dialogue looked at the problems and opportunities for EPR to address the needs of the flexible packaging industry to reach full circularity.

It is with this background that FPA provides this testimony to improve the Minnesota extended producer responsibility bill in order to support a well-crafted EPR program. This would provide Minnesota with the necessary elements to improve collection and infrastructure investment and development of advanced recycling systems, allowing for the collection and recycling of a broader array of today's packaging materials—including flexible packaging—and quality sorting and markets for currently difficult-to-recycle materials.

II. Statewide Goals Must Flow from Needs Assessment & Material-Neutral Metrics

The authors of HF3577 required that the needs assessment inform the performance targets of Minnesota's EPR program to generate a suite of policy options to achieve a circular economy. In order to appropriately judge progress towards circularity, the bill correctly uses the information that will be provided by a needs assessment as a baseline. Unfortunately, HF3577 subsequently requires the Commissioner of the Pollution Control Agency to override the organic performance targets to achieve arbitrary goals outlined in legislation. While the Minnesota Pollution Control Agency's SCORE report for 2022 showcased the highest recycling rate ever in Minnesota at 45.2%, the goal of 75% for covered materials by 2038 is far too ambitious based on historical data.¹ FPA and its members request the bill be amended to allow the needs assessment to inform and determine any overall statewide goals in order to prevent the most recyclable materials in the bin from being properly recycled.

In addition to allowing the needs assessment to drive data-based policy decisions, it is vitally important to have an unbiased set of metrics to compare packaging materials to. HF3577 directs the producer responsibility organization to develop a stewardship plan that, among other metrics, develops source reduction targets. Unfortunately, the criteria for these targets specifically excludes applications when a non-plastic material is to be replaced by a plastic material – even in cases where the plastic material outperforms its competitors on every environmental metric. FPA requests that Minnesota's EPR program be data-driven and use an unbiased set of metrics to evaluate all materials in the recycling stream.

¹ Minnesota Pollution Control Agency, "Select Committee on Recycling and the Environment Report," (St. Paul: MPCA, 2023).

Finally, the needs assessment for Minnesota's EPR program can be improved by considering several nuances related to flexible packaging. The Recycling Association of Minnesota has utilized a grant from Scott County to develop a list of locations where plastic films can be collected for recycling.² Any statewide needs assessment should expand this inventory and consider innovative collection methods when determining recycling access for Minnesotans. Facilities should also be evaluated for investments in up-to-date advanced recycling technologies so producers can properly target investments toward any existing gaps in existing infrastructure.

III. Necessary Exemptions for Critical Goods

While FPA supports extended producer responsibility to drive circularity and improve environmental outcomes, there are several critical products that must be exempted from EPR programs. The Sterilization Packaging Manufacturers' Council develops rigorous medical device packaging specifications that adhere to ASTM International standards to ensure the integrity of flexible barrier materials. If these types of packaging were forced into the recycling system or if they were subject to recycled content requirements, Minnesotans would not be guaranteed access to life-saving healthcare. FPA and its members request an amendment to the bill that provides an exemption for medical device packaging from the EPR program. This exemption should also apply to animal biologics for many of the same reasons. FPA and its members also urge consideration of exemptions for other critical goods like infant formula, medical food, and packaging regulated by the Federal Insecticide, Fungicide, and Rodenticide Act.

IV. Reasonable Costs to Producers

As stated above, FPA and its members support well-crafted EPR that can be used to promote this needed shift in recycling in the United States. While FPA's members are wholly committed to addressing plastic pollution, asking producers to pay for Minnesota's recycling system for covered materials in full with no maximum payment threshold threatens the long-term success of the EPR program. It is likely also to lead to unintended policy consequences within the waste supply chain.

VII. Conclusion & Next Steps

For these reasons, FPA opposes the current HF3577 but stands ready to support a future version that creates a strong foundation for a meaningful EPR program for packaging. FPA and its members wish

² Recycling Association of Minnesota, "SNAG Those Bags! Plastic Bag and Film Recycling," (St. Paul: RAM, 2024).

to note that the authors of this bill have gotten a lot right, from antitrust protections for the PRO, to the producer definition, to the targeting of producer investment in packaging infrastructure. We look forward to working with you to provide the necessary investment in new infrastructure and markets for all packaging, including flexible packaging. In advance, thank you for your consideration. If we can provide further information or answer any questions, please do not hesitate to contact me at (443) 534-3771 or jrichard@flexpack.org.

Respectfully,

A handwritten signature in black ink that reads "John J. Richard". The signature is written in a cursive, flowing style.

John J. Richard
Director, Government Affairs
Flexible Packaging Association