

TO: Members, New York State Legislature

SUBJECT: Essential Elements of a Workable, Effective EPR Program

DATE: May 30, 2023

The undersigned businesses and associations support the adoption of a workable, cost-effective expanded producer responsibility program for post-consumer packaging materials. We believe it is essential that any program:

- be guided by the findings of an assessment of existing recycling programs and infrastructure, secondary markets, current levels of municipal and private spending, and actual recovery and reuse rates on a material-specific basis;
- set a workable timetable that allows for public and state review and approval of producer responsibility plans, and adequate time for producers to organize and implement a final plan;
- provide a reasonable sharing of collection and management costs among packaging producers, municipalities, and private haulers; and
- allow material recovery and reuse "rates and dates" to be based on actual experiences in the recovery and reuse of materials, practical rates of program expansion, and program costs, with "rates and dates" to be proposed by producers but approved and finalized by the state, with the ability to modify targets based on their feasibility and costs.

Our informal coalition has provided the Hochul administration, Senate and Assembly with specific legislative language and amendments to address these concerns, and to assure that any final program is both effective in improving the state's material recovery and reuse programs and avoids undue cost burdens on consumers or businesses.

We urge the Administration, Senate, and Assembly to continue to engage with the business community along with other stakeholders to assure adoption of a workable, effective, and affordable EPR program that can serve as a model for other states. And we welcome the opportunity to discuss our recommendations and concerns, as well as current pending legislators, with all state legislators interested in effective, affordable recycling legislation.

- Ag Container Recycling Council
- American Apparel & Footwear Association
- American Cleaning Institute
- American Forest & Paper Association
- AMERIPEN (American Institute for Packaging and the Environment)
- Associated Builders and Contractors of NYS
- Association of Home Appliance Manufacturers
- Buffalo Niagara Partnership
- Business Council of NYS
- Can Manufacturers Institute
- Carton Council of North America
- Consumer Brands Association
- CropLife America

- Distilled Spirits Council of the United States
- Empire State Forest Products Association
- EPS Industry Alliance
- Flexible Packaging Association
- Food Industry Alliance of NYS
- Food Industry Alliance of NYS
- Foodservice Packaging Institute
- Greater Binghamton Chamber of Commerce
- Hi-Cone
- Household & Commercial Products Association
- New York State Distillers Guild
- North Country Chamber of Commerce
- Pactiv Evergreen
- Plastics Industry Association
- PRINTING United Alliance
- Tyson Foods
- Upstate United
- The Wine Institute

Contacts:

Ken Pokalsky, The Business Council of New York State, Inc., 518-694-4460, ken.pokalsky@bcnys.org

Andrew R Hackman, Serlin Haley LLP , (202) 770-2231, ahackman@serlinhaley.com

EPR ISSUE BACKGROUND - New York has led the nation in promoting the recovery and reuse of post-secondary materials, with its early adoption of a bottle bill, its statewide and local solid waste planning requirements, its mandate for statewide curbside collection of recyclables, the creation of a program to incentivize the growth of a secondary materials markets, among other policy initiatives.

However, these programs have lost their emphasis, and some have been unstaffed and unfunded for several years. Meanwhile, with the pandemic-based economic slowdown and China's "National Sword" program causing global disruptions in markets, there has been growing concerns about New York's overall recycling efforts.

The new focus in New York has been on "producer responsibility" legislation that would require producers of packaging and paper products come together to take responsibility for the management and financing of the collection, processing, marketing, and reuse of post-consumer materials. Broad expanded producer responsibility (EPR) legislation has been introduced in New York each legislative session since 2019.

So far, only four states – Maine, California, Oregon, and Colorado – have adopted broad EPR programs, but they differ significantly in their structure and scope, and none have yet been implemented, so they offer little clear guidance for New York.

Experience elsewhere shows that EPR laws are not a panacea. For example, Stewardship Ontario, which has supported that province's curbside reporting program since 2004, saw a nearly 20 percent decrease in recycling rates from 2013 through 2019 (looking at pre-pandemic data), while program costs over that same period increased by 40 percent.

Likewise, statewide "producer responsibility" programs can be expensive. A York University study analyzing the potential for a statewide packaging and paper EPR program in New York suggested direct annual costs of nearly \$1 billion, with even greater secondary market impacts. And while EPR legislation is touted by some as providing financial relief to municipalities by shifting material collection and processing costs to the private sector, no EPR legislation introduced in the New York to date requires that any municipal cost savings be used to provide local tax relief.

Interesting, every major EPR proposal introduced in New York over the past several years included a requirement for a needs assessment, to evaluate the current state of recycling and recycling infrastructure in New York and help determine what needs to be done to improve recovery and reuse of post-consumer materials. Ironically, these bills recognize the need for a better understanding of existing programs while simultaneously imposing expansive new recycling management and financing mandates on New York businesses.

A better approach is to let a comprehensive needs assessment guide the creation of new recycling mandates. In April 2023, the Center for Sustainable Materials Management (CSMM) at the SUNY College of Environmental Science and Forestry received state funding to conduct a statewide needs assessment and gap analysis for New York's recycling system. This project will "compile data on how the recycling system in the state operates . . . and required operational and capital investment needs," critical building blocks of an efficient, effective state program. ESF added that, "A comprehensive needs assessment and meaningful gap analysis are critical first steps to New York State meeting its recycling rate goals . . ."

As discussed above, a wide array of businesses and business associations engaged in the production and sale of packaging and consumer products have come together to make recommendations for New York's producer responsibility legislation. With several competing proposals before the state legislature and limited days left in the 2023 legislative session, it is unclear whether the state can successfully design a workable, effective, and affordable program this session.

We will continue to engage in this process, and work with the Administration and key legislators to assure that our goals and recommendations are reflected in any new legislative proposals.

Otherwise, we look forward to seeing the results of the EFS needs assessment, and helping shape legislation in a process that is more fully informed on current program capabilities and performance, and specific needs for future program success.