



The undersigned organizations appreciate the opportunity to provide comment on A.5801, which seeks to establish an extended producer responsibility (EPR) mandate for packaging and printed material. While many of our organizations support a properly structured mechanism to aid the recycling system, we have concerns with A.5801 in its current form and believe the bill must be amended to provide a more practical program to improve the recycling system in New York.

Our organizations recognize supporting and improving the recycling system is critical and there is a shared responsibility that producers can play in improving the recycling system. However, the cost and scope of this program will likely be significant to producers and impact the price of consumer goods. **In fact, based upon similar programs in Canada A.5801 is likely to cost \$500-800 million dollars, in New York and cost consumers 4-6% increased costs to grocery bills.** In order to ensure that an EPR program in New York is reasonable, we would like to highlight the following core issues and potential solutions.

Critical Problems & Solutions

1. **Funding & Cost Control** – The funding mechanism in A.5801 must be reasonable and designed in a way that directs funding to recycling improvement. It also must be constructed in a way that shares costs between



producers, municipalities, service providers and consumers for fair allocations of services and costs for which a particular party has influence over. The passage of an EPR law should not remove or divert other necessary solid waste funding sources like tipping fees, pay-as-you-throw programs, solid waste assessments and more. Making producers “price-takers” without any shared responsibility could doom this program under immense costs and does not provide recycling system players with incentive to use funds for actual recycling and improvement.

Solutions:

- a. ***The A.5801 funding mechanism should not cover 100% of the costs of the recycling system as it exists today. The Producer Responsibility Organization (PRO) should be given power to create cost-sharing rates or specific percentages of recycling activity-based costs should be stipulated in the bill (similar to Canadian programs).***
- b. ***The PRO must be allowed the flexibility to budget for and support new recycling infrastructure via a separate budget and funds from producers must support infrastructure that is relevant to those sectors.***

2. **Problematic Definition of “Readily Recyclable”** – This definition is a critical standard for the implementation of the program. The requirements for markets and volume and acceptance at facilities makes the concept unfeasible for nearly all traditionally recycled materials to qualify as readily recyclable. State and local material markets can be very volatile and packaging recyclability is just one of many factors that must be weighed when considering policy such as outlined in S.1185A. ***These factors should be determined by the producer responsibility organization in collaboration with stakeholders in the solid waste system.***
3. **Needs Assessment is Necessary** – AMERIPEN has articulated, in our principles, that a needs assessment is critical to determine the total budget and infrastructure needed for an packaging producer responsibility program ***before*** a stewardship plan and law is implemented. ***A needs assessment should be included in this legislation and the effective date must be delayed 1-year (to 4-years after the effective date of the Act) to allow for the development of the assessment.***
4. **Producer Control of the Recycling System** – Producers acknowledge they have responsibility to help support recycling systems, considering market conditions, and provide some financial support. In several places in A.5801 it is suggested that the PRO can take over municipal solid waste services if a municipality opts out of providing such services and the PRO can contract for those services. The PRO should ***not*** be mandated to take over control and contract for recycling services. Additionally, there is no criteria for how and when a municipality might “opt-out” of providing recycling to its citizens. The PRO will have no experience in running recycling services in New York and producers do not wish to take over that responsibility. Decades of solid waste service expertise in municipal governments and the private waste sector would be undermined if this were to occur.

Solutions:

- c. ***The PRO should only provide reasonable funding support for recycling operations and improvement through provision of reasonable per ton or per capita reimbursement rates for recycling, including expansion of access to recycling. Direct contracting with recycling service providers is not needed.***
 - d. ***At a minimum, the law must provide a clear set of criteria and threshold, for what circumstances and approval is needed, if a municipality requests to “opt-out” of providing recycling services.***
5. **“Toxic Substance” Definition Could Ban Traditional Recyclables** – Using an extended producer responsibility law to ban “toxic substances” not a traditional function of EPR programs and could ban materials like metals, plastic and glass from being able to be considered as “readily recyclable”. No other EPR system in the world

contains such provisions for toxic substances and this provision would significantly divert resources from the PRO away from supporting recycling activities.

Solution: Broad chemical restrictions should not be regulated under an EPR law, by a PRO, and should be removed from the bill. These issues deserve full debate and should be addressed via independent legislation.

6. **The Definition of “Producer” Must be Clarified** – The definition of “producer” remains confusing, for packaging, as to who is the responsible producer. For the purposes of this law, the producer of packaging or “covered materials” is the brand-owner who “uses” the covered material. Without this distinction, several different packaging material manufacturers might be simultaneously implicated as the producer of a package, when the brand-owner is really the responsible producer.

Solution: each reference to within the definition of producer, to “covered material” should be amended as follows: ***“THE PERSON WHO ~~MANUFACTURES~~ USES THE COVERED MATERIAL OR PRODUCT ...”***

7. **“Tertiary” and Transport Packaging Should be Excluded** – The types of materials that DO NOT end up in residential recycling programs, which is the focus of this bill, should not be subject to this program. They do not end up in curbside recycling programs and they already have an established and funded solution for collection and recycling via commercial entities.

Solution: Clearly identify that the scope of the bill excludes tertiary and transport packaging that does not reach the consumer.

Conclusion

This coalition of impacted stakeholders recognize the need to improve the recycling system in New York and beyond and we remain committed to being a partner to find the right paths forward. We urge the Senate and the Assembly to consider these critical issues and further amend A.5801 in a way that makes it more feasible and leads to improved recycling systems in New York. We believe that improving the recycling system is, and always will be, a shared responsibility. Therefore, we hope that our comments are helpful in creating a pathway to developing a truly workable program under this legislation.

Respectfully Submitted, on Behalf of the Following Organizations:

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| - Air-Conditioning, Heating, and Refrigeration Institute | - Foodservice Packaging Institute |
| - American Chemistry Council | - Household & Commercial Products Association |
| - American Cleaning Institute | - New York State Chemistry Council |
| - American Forestry & Paper Association | - New York State Chapter – National Waste and Recycling Association |
| - AMERIPEN - American Institute for Packaging and the Environment | - New York State Distillers Guild |
| - Association of Home Appliance Manufacturers | - Owens-Illinois Inc. |
| - The Business Council of New York State | - Pactiv Evergreen Inc. |
| - Consumer Technology Association | - Personal Care Products Council |
| - Council for Responsible Nutrition | - Plastics Industry Association |
| - DISCUS - Distilled Spirits Council of the United States | - Retail Council of New York State |
| - Empire State Forest Products Association | - The Toy Association |
| - Flexible Packaging Association | - Water Quality Association |
| - Food Industry Alliance of New York State | - Western Plastics Association |
| - | - Wine Institute |