



February 8, 2023

To: Maryland Senate Education, Energy, and the Environment Committee
Re: SB0222 Environment – Reducing Packaging Materials – Producer Responsibility

The Maryland Recycling Network promotes sustainable reduction, reuse and recycling (the 3 "R's") of materials otherwise destined for disposal and the purchase of products made with recycled material content. We achieve these goals through education programs, advocacy activities to affect public policy, technical assistance efforts, and the development of markets to purchase recycled materials and manufacture products with recycled content.

Our members are county and municipal government recycling managers, private sector recyclers, non-profit recyclers and citizens who support recycling. We have direct experience operating recycling and composting programs at the county and municipal government level. We know the ins and outs of recycling in Maryland. Our experience informs our comments.

MRN and SB222

The Maryland Recycling Network has consistently supported EPR proposals whether they apply to electronics products, paint, batteries, or other hard to recycle materials. One of our priorities for this legislative session is to see the paint EPR bill pass both houses. We have worked with legislators and other experts to craft draft language to modernize Maryland's electronic products EPR law.

We support EPR for packaging. We support funding local government recycling programs to the greatest extent possible, the concept motivating SB222. Local governments, whether counties or municipalities, need a sustainable source of funding for the packaging collected in curbside and drop-off programs throughout our state. SB222 can help to meet this need.

We support SB222 but recommend doing a needs assessment before any legislative action is taken on EPR for packaging. If the legislature chooses to move forward before a needs assessment is conducted, we are proposing amendments and clarification of several sections.

Our key areas of concern include:

The **Needs Assessment** (Section 9-1702.2) is absolutely necessary. Essentially it is a description of the existing statewide recycling infrastructure covering waste composition, current recycling and compostable packaging tonnages, how recyclables are collected throughout Maryland and where they are taken for processing, including the existing collection and processing infrastructure for those materials throughout Maryland, costs of operating and using those facilities, and other issues connected to the operation of these services. Much, but not all, of this data exists in MDE's annual report on the state of recycling in Maryland.

Recommendation: First conduct the Needs Assessment as part of the Task Force on Recycling Policy and Recycling and Waste Systems in Maryland envisioned in HB109. Then use that data to draft EPR for packaging legislation. This approach will provide thorough knowledge of the existing state of recycling in Maryland along with an understanding of additional needed infrastructure and funding requirements. This

knowledge enhances the legislature's ability to craft legislation that will succeed in funding local government recycling programs.

If the legislature chooses to move forward, however, we offer the follow comments and recommendations for amendments:

Definitions:

Maryland code defines “**recycling**”, “**organics recycling**” “**recycling services**” and “**organics recycling facilities**” and “**recycling facility**” (see Maryland Code, Envir. 9-1701 and 9-1713). “Recycling services” include collection and processing, however, “recycling facility” is defined as “a facility that provides recycling services” except that a recycling drop-off collection point for residential recyclable materials is excluded from the definition (see 9-1713). When this legislation refers to a “recycling facility” we believe it intends to refer to a “Material Recycling Facility (MRF)” which separates and processes those recyclables for end markets. This is a crucial distinction in the funding formula for transporting recyclables to a recycling facility.

Recommendation: Define “Materials Recycling Facility” as “a processing facility designed to separate and process collected recyclables for sale to end markets” and use that term in place of “recycling facility”.

Definition of “**packaging materials**” 9-2501(E) The bill is unclear about whether or not it applies only to packaging generated at residences, including multi-family housing, or also to packages generated at businesses. Local governments primarily focus on residentially-generated recyclables including those generated in multi-family housing and in public spaces although many manage small amounts of commercially-generated recyclables. Many businesses sell their recyclables and enjoy the revenue from recycling.

Recommendation: Insert language into the definition of packaging materials that clarifies these are only packaging materials generated for recycling or disposal at residences, multi-family housing and in public spaces or that are managed under a local government's recycling program. We also urge adding language that nothing in this bill prevents businesses from selling their recyclables to end markets.

Deposit-return system for beverage containers: 9-2503(D) authorizes the separate creation of a deposit-return system. This is a unique and occasionally controversial subset of recycling with profound consequences on the revenues available to MRFs and collection programs. Deposit-return legislation should be the subject of separate legislative debate.

Recommendation: Delete this section. If the legislature believes beverage container deposits are needed in Maryland, it should specifically authorize their creation, create financial protection for existing local government collection programs and MRFs, and establish the legal requirements for these programs.

Local government reimbursement: several parts of this bill delineate how local governments are to be reimbursed for their collection, transportation and processing costs. This, of course, is the heart of EPR for packaging. The provisions are 9-2504(B)(12) lines 5-8, page 16, (D)(1)(II), lines 7-17, page 17, (D)(2)(I) lines 12-25, page 18 and (E) lines 12 – 24, page 19.

- (B)(12) tells local governments to request reimbursement for “costs associated with transporting collection, and processing packaging materials...”
- (D)(1)(II) 1 – 3 however, limits collection costs to up to 50% while placing no limits on transporting or processing. In addition, (D)(1)(II) 4 refers to cost reimbursement for “recycling packaging materials that are diverted to be recycled or composted in the state”. The meaning of this latter provision is unclear and implies that local governments that send their recyclables to be processed at a MRF located in another state will not be reimbursed.

- (D)(2)(I)(1-4) says the reimbursement rate is based on population size, the distance to the nearest recycling or organics recycling facility, the commodity value of recycled packaging materials and any socioeconomic or geographic factors as determined by the Department.
- (E) has to do with infrastructure funding giving preference to existing infrastructure.

These four provisions raise concerns and recommendations for new language or clarification:

- Collection cost reimbursement is limited to 50 percent of a “reasonable rate”, which may or may not be half of the local governments’ actual costs. We understand a producer group’s desire not to pay for excessively expensive collection (or processing) equipment, we also understand a local government’s desire to operate its program with the best available, most technologically advanced equipment.
Recommendation: Collection is the highest cost for a curbside recycling program. The reimbursement rate should be higher than 50 percent.
- Transportation reimbursement is limited to the “nearest” recycling or organics recycling facility. Given the very loose definition of “recycling facility” this could mean the nearest scrap yard instead of the nearest MRF designed to process residential recyclables. For many municipalities, such as those in northern Prince George’s County, the nearest MRF will be in a different county than their home county’s MRF. Under this provision they would not be fully reimbursed. In addition, at least one Maryland county sends its recyclables to a MRF in Delaware, another currently sends some of its recyclables to a MRF in Pennsylvania, and others may use MRFs located in Virginia. As noted below, the three publicly-owned MRFs limit the use of their facility to in-county material (with one exception). This means that counties located east or south of those facilities will not be fully reimbursed for transportation costs.
Recommendation: The term “nearest recycling facility” should be replaced by “the materials recycling facility of their choice”.
- Three Maryland counties own and operate a MRF. In order to preserve this public asset and to control contamination through their education and enforcement efforts, two counties do not accept recyclables generated outside of their county and the third county only under contract with another local government. Those local governments along with the private sector MRF owners should retain the power to determine who can use their facility. SB222, as written, does not appear to bar them from limiting the use of their MRF.
Recommendation: This should be clarified in the bill.
- The publicly and privately owned and operated MRFs in Maryland are highly experienced in selling the recyclables they process into raw materials. D(2)(I)(3), includes the commodity value of recycled materials included in assessing the reimbursement rate. This language implies that the publicly and privately-owned MRFs keep the revenue either for distribution to local governments or for their own use.
Recommendation: Insert language making it clear that publicly and privately-owned MRFs keep the revenue from sale of processed recyclables for distribution to contracted local governments or for their own use.
- (D)(1)(II) 4 refers to cost reimbursement for “recycling packaging materials that are diverted to be recycled or composted in the state”. The meaning of this provision is unclear.
Recommendation: If it is intended to bar use of out-of-state recycling or organics recycling facilities, it should be stricken given the current and likely future reliance of Maryland local governments on out-of-state facilities.
- Recommendation: Amend the bill to clarify that local governments and private sector MRF operators retain control over their decisions on recycling infrastructure purchases, including processing equipment.

- Recommendation: Amend the bill to clarify that the producer group does not have the authority to build a MRF for itself or a contractor.

Subscription service

Not all local governments collect or contract for collection of recyclables. "Subscription service" occurs when a resident directly contracts with the recycling and waste collector of their choice. This collection service option is common in rural, exurban and parts of suburban Maryland. It does not involve local government taxes or fees. Subscription service is common throughout the United States but is not found in other countries. The four states with existing EPR for packaging laws, are grappling with how to manage these programs as they put their programs together. They do not yet have a working answer.

Recommendation: The bill should be amended to recognize the reality of subscription service and offer a solution for providing this service.

Advisory Council:

9-2505 authorizes the creation of a "Producer Responsibility Plan Advisory Council". The purpose of this Council is "to provide advice to the Department and producer responsibility organizations for drafting, amending, and implementing producer responsibility plans". Members include a good array of organizations directly involved in managing Maryland's recycling programs including local governments, recycling and compostables collectors, and recycling and organics processors.

The Advisory Council also includes representatives of the consumer goods sector. These will also be members of the producer responsibility group and will be asked for advice on a plan they are drafting or have approved. Retail and small businesses may also be members of the producer group and will be in the same position unless those small businesses are exempted from the EPR system due to their size. Material-oriented trade groups are likely to also have members in the same position. It doesn't make sense to ask for advice from those who are drafting or have approved the plan.

In addition, the Council only has the power to advise and make recommendations to the Department. It does not have the power of consent. The producer organization only has to respond to any Council comments.

Recommendation: Amend this section to eliminate the consumer goods sector from membership on the Advisory Council; restrict retail and small businesses representation to companies that are exempted from membership in the producer group; restrict material trade groups to those without members in the producer group. All of these groups can attend Advisory Council meetings and participate in public comment. Recommendation: Amend this section to require the Advisory Council's consent to plans before they are formally sent to the Department.

Antitrust exemption:

Section 9-2508 provides the producer group with a complete waiver of state antitrust and restraint of trade law. This blanket exemption poses a problem due to the high number of producers covered by EPR. Based on the experience in Canadian provinces, Maryland is likely to have more than a thousand producers subject to this proposal. Only a small number will be able to participate in the producer group's executive committee or workgroups. As a result, the practical impact of the exemption will allow that limited number of companies to have access to information that is normally prohibited by antitrust law and is only available to them not to all of the group members.

Recommendation: Strike this section.

The Maryland Recycling Network supports EPR. We want EPR for packaging to succeed in Maryland. We also want to be sure it will succeed. We believe a Needs Assessment will provide the information the Legislature needs to write legislation that will work in reality and not just in theory. If the legislature

chooses to proceed with EPR legislation before the results of that Needs Assessment are available, we suggest amendments and clarifications of SB222.

We offer these comments in the hope that Maryland's EPR program can be a trailblazer. The questions and concerns we are raising above are crucially important to local governments and recycling service providers. The best EPR packaging law for Maryland will provide guidance for these key issues now instead of waiting for MDE and a producer group to solve them without legislative guidance. Maryland local governments and the Maryland recycling industry have too much at stake.

The Maryland Recycling Network stands ready to serve as a sounding board and resource for legislators and others interested in pursuing our mission. Please do not hesitate to contact me via email phoustle@marylandrecyclingnetwork.org, phone 301-725-2508 or mail - MRN, PO Box 1640, Columbia MD 21044 if you have any questions or would like additional information regarding the above.

We look forward to working with you to continue the strides we have all made to improve Maryland's recycling programs in a time- and cost-effective manner.

Sincerely,

A handwritten signature in black ink, reading "Peter M. Houstle". The signature is written in a cursive, flowing style.

Peter M. Houstle
Executive Director