



April 7, 2022

The Honorable Alex Valdez
Chair
The Honorable Edie Hooton
Vice-Chair
House Energy & Environment Committee
Colorado General Assembly
200 E Colfax Avenue
Denver, CO 80203

Re: Comments for House Bill 22-1355 - Extended Producer Responsibility (EPR) Packaging Program

Dear Chair Valdez and Vice-Chair Hooton and Member of the Committee:

On behalf of the Glass Packaging Institute (GPI), I offer the following comments for House Bill 22-1355, legislation to create an Extended Producer Responsibility (EPR) Program for packaging and printed paper. While we have participated in some of the stakeholder discussions regarding this proposal and note some positive changes in the (unofficial) pre-amended version circulating today, we still have several concerns with the proposal and its impact on the domestic glass container manufacturing industry, specific to operations in the state of Colorado. We seek additional amendments to the legislation, and offer this testimony as constructive suggestions to improve the program that would result from the bill.

GPI is the North American trade association for the glass food and beverage manufacturing companies, glass recycling and other partners and suppliers to the industry. The industry works closely with local and state governments throughout the country on issues surrounding sustainability, recycling, energy and greenhouse gas emissions goals and mandates.

Glass Container Recycling Background

The glass container manufacturing industry has a significant stake in the effectiveness of glass recycling programs. Recycled glass is a key component of the glass container manufacturing process. For every 10% of recycled glass included in the manufacturing process, energy costs can be reduced 2-3%. A corresponding reduction of plant greenhouse gas emissions also occurs when increasing levels of recycled glass are used to produce new containers. Glass is a long-standing package of choice for food and beverage, and is sustainable, reuseable, refillable, non-toxic and infinitely recyclable.

The average glass bottle or jar produced in the US is made with one-third recycled glass. GPI is seeking to further increase that impressive rate, with a nationwide effort to increase the overall glass recycling rate to 50% by 2030, in an initiative that was announced last year. This will assist our brand customers, who are treated as producers under this legislative proposal, as they work to achieve their own packaging environmental and sustainability goals, alongside consumers' broad expectations that glass recycling options be available in their communities.

Glass Container Manufacturing & Glass Recycling in Colorado

Colorado is home to two glass container manufacturing plants, O-I Glass in Windsor and the Rocky Mountain Bottle Company (RMBC) in Wheat Ridge. Collectively, these plants produce several million bottles every day, many destined for local and regional customer end markets.

Supporting the production of these glass bottles, RMBC also operates a glass processing and recycling cleaning facility, where glass is sorted to specifications for input into their furnace. Momentum Recycling provides recycled glass sorting to specification at their facility in Broomfield. This is in addition to the hundreds of bars and restaurants across the state that may contract independently to recycle their on-premise glass bottles, for eventual re-use in glass bottle manufacturing.

Glass Occupies a Unique Place in the Current Recycling System

Glass has a unique place in single-stream recycling programs, and is treated differently in most Material Recovery Facilities (MRFs) in contrast to other recyclable commodities. While we appreciate that HB 22-1355 includes provisions that recognize the importance of contamination and quality to market value and end-market use, we feel that this foundational concept can be strengthened. The bill assumes a basic reliance on the underlying single-stream recycling structure, and requires the Producer Responsibility Organization (PRO) to pay for, and then expand upon the current system.

It is our belief that some of the MRFs in Colorado should have been investing in more equipment and better processes for glass over the course of the past decade (or longer). Glass loses value and the industry loses yield the minute the recycling truck crushes it with a hydraulic press in the commingled stream. When processed at most MRFs, glass is the "negative sort" broken further into smaller fractions and sifted through screens, while the intact packaging material remains on the conveyor to get sorted by various other pieces of equipment geared to "positively" sort or search for that material.

What most policy makers do not realize is this process results in a glass pile (not referred to as a "bale") being laden with anywhere from 10 to 50 percent non-glass residue, such as shredded paper or small plastic items like straws, caps or stirrers, along with what the industry refers to as "fines", granular material that often indistinguishable from dirt or sand.

As a consequence of this process, local officials are often told that glass has no, or negative/low value end markets, or that the costs to move glass from MRFs (and by extension local governments) to secondary markets is cost prohibitive. Those companies, if

they also operate landfills, often try to convince local governments to discontinue glass recycling, and suggest moving the material directly to the waste stream, where they enjoy charging, by weight, to tip the material into their landfills. While glass is heavier, I can assure the committee that it is not the weight, but the contamination that brings down the market value of the MRF glass. Clean sourced glass from drop-off or deposit return programs has positive market value, and there is certainly within the State of Colorado end-markets for all quality glass that can be recovered.

The bill should include stronger language to ensure better performance for outbound material, and stronger measures should be included to keep covered material out of the state's landfills. MRFs that have under-invested in equipment prior to enactment should bear some of the financial responsibility for upgrading their facilities before getting additional funds from the PRO for new equipment to meet the higher standards and recycling goals that will emerge from the PRO and advisory board process.

Oregon included MRF performance standards in their EPR legislative session last year, and Minnesota, while not having EPR, has enforceable waste diversion standards that set goals for residual contamination. Even though covered material deemed recyclable will not count as recycling if sent to the landfill, the landfill companies will still be paid - by weight - for material that is sent to landfill. We need a stronger deterrent in the program to keep glass out of the landfills.

Glass Needs a Voice in the Program

Most of the urgency felt by advocates for EPR programs in the US the past two years is due to plastics and the growing volume of fiber/paper packaging in the residential waste stream due to shifting consumer behavior (ecommerce), and the impact of the pandemic on consumption at home. Glass is generally not an issue for litter, nor is it overwhelming the waste management system, but can account for 10-20 percent of the material (by weight) in the recycling stream. However, as noted above, the current system is not favorable to recycling glass. The industry can only meet our goals if we divert more glass from landfill and recover more glass for the supply chain. For that reason, we can see a well-constructed EPR system helping industry recover more recycled glass. European EPR programs, which do not rely on commingled single-stream, can produce glass recycling rates of 80 percent or more, and average around 70 percent recovery and recycling.

We are concerned that the management and administrative oversight of the system outlined in the bill could easily disregard the glass industry voice. The largest brands will dominate the PRO Board, and while some may have glass in their packaging portfolio, their focus is likely to be plastic or paper packaging. There is a provision that the PRO Board "MAY" include non-voting seats for material manufacturing groups. The Advisory Board meanwhile has numerous waste industry and local government interests, but only one paper manufacturing seat and one non-paper manufacturing seat. We do not feel that the waste management, MRF or hauling industry will appropriately capture the views of the glass industry in recycling decisions, and that one non-paper material group is inadequate to represent all the other material interests.

Commercial/Retail Recycling is Important

While the needs assessment can examine the state waste stream and explore options to serve small businesses, there is a limitation on the program to only service residential collection. A significant amount of covered recyclable material will flow through commercial and retail outlets, in addition to “public space” recycling. The program should be allowed to collect material across commercial and retail sectors. A significant percentage of food and beverage containers are used away from home and will be disposed of in the commercial space. Regardless of whether the program treats food establishments as “providers” under the law, the recovery of material should include places where covered packaging is used and disposed of – sporting venues, retail shopping centers, hospitality and entertainment venues as well. In addition, in many instances, multi-family residential is mixed in with the commercial retail sector.

There is also a definition in the proposal of industrial recycling that needs to be addressed. Industrial recycling, if intended to be manufacturing production, or construction and demolition / building production material, should be excluded, but the definition includes what are otherwise known as secondary material recovery facilities or material processing facilities.

These facilities, which often take the material from the primary MRFs and clean up the covered material to a higher specification level, should be a part of the recycling services eligible for program funding, as they produce tons of additional covered material by sifting through residual contamination delivered to them by primary MRFs. Moreover, they are critical processing facilities required to process recyclables to cleaner streams of material for markets.

Additional Concerns: Fees, Quality and Recycled Content Requirements

Any new program should balance the structure dictated in statute, with the regulatory flexibility needed to adjust to market conditions and changing demographics, as well as consider the future mix of packaging options in the waste stream.

Packaging-based industries in Colorado and across the country regularly compete within material types (glass, aluminum, plastic, aseptic, multi-material, etc.) and among each other for food and beverage customer business. This is because our collective customers typically have many options for how they protect and package their respective products. For food and beverage packaging, there are food safety and quality decisions that influence packaging choice. As currently outlined, GPI strongly believes that the EPR framework may provide financial incentives for brands to switch to more problematic packaging formats with limited or largely foreign end markets. Glass was never sent overseas for recycling, and we believe that the fee structure should reward circular economies that exists or can be created in-state, to keep material made in Colorado recycled in Colorado.

A tight circular economy of materials like glass: made, filled, consumed, recycled and remanufactured in Colorado have tremendous potential to provide sustainable packaging options for the state, with lesser mileage and lower impacts, regardless of weight. Incenting

these types of value chains is necessary to help build the reuse and refill system envisioned by the bill.

We are concerned about post-consumer recycled (PCR) content restrictions placed on goods sold in Colorado. GPI understands the desire to see recycled content percentages increase in packaging. The glass industry wants as much recycled content as we can economically recover. However, unlike some other materials, recycled glass has regional, not global end markets. Glass recycled in Colorado will not impact PCR levels for glass made in the Southeastern US, other countries or continents. In addition, some premium glass packaging, designed to hold its product for years, may have very little recycled content due to sourcing issues closer to its production location. We urge the committee to clarify the guidance and reporting requirements for PCR content so they are not merely a burdensome data collection exercise, or worse, punish high quality packaging that is completely recyclable. Material industries should be able to certify broad recycled content levels across the entire industry, in order to satisfy the goals of the legislation. This can be done without requiring every brand to know and label the precise recycled content of their numerous packaging units.

Lastly, without more emphasis on quality and performance standards, material industries, who are the part of the manufacturing chain that uses the recycled material to make new packaging, are left at the mercy and prioritization of business decisions made by the PRO and the broader hauling and recycling industries. Our ability to economically produce packaging that meets EPR program requirements, is contingent on whether recycling facilities have upgraded their recovery systems to effectively capture the glass they sort out. The market value cannot be based on those low standards, and must be designed to support viable, specification-driven, manufacturing end markets.

We also have concerns with, and oppose, fee structures anchored to weight, which has nothing to do with the recyclability of the material, or its impact on the waste management system. Weight-based fee systems unintentionally provide advantages to lesser sustainable packaging.

GPI and its member companies look forward to additional opportunities to engage with Colorado on all recycling related issues, increasing recovery, reuse and recycling of glass made in the state.

Sincerely,



Scott DeFife
President

April 7, 2022

Dear Chairman Valdez and Committee members,

I appreciate the opportunity to submit this testimony regarding HB 22-1355. I want to take the time to thank all of you for the hard work you do on behalf of all the citizens of Colorado. What you are doing has real importance and meaning for all of us and our future quality of life.

I represent the Colorado Potato industry in the San Luis Valley of Southern Colorado. We are very concerned about sustainability and truly believe that the concept behind this bill is a worthy goal and extremely valuable to the future of Colorado. But we have to oppose this bill as it currently exists. The bill is very difficult to read as written, much less understand.

Our potato shippers send over 1.5 billion lbs. of potatoes to market in a typical year and this requires a large amount of expensive packaging. Our shippers do not get to decide what packaging they use but it is dictated to them by their customers, primarily the large grocery retailers. We assume that this bill intends to charge these retailers the fees needed to implement this program. We are concerned that these retailers will consider this fee when deciding where to purchase their potatoes. This additional cost will put us at a competitive disadvantage when trying to sell our potatoes. I must also note that these additional costs will be passed on to consumers at retail when consumers are already faced with rising food costs and inflationary pressure.

As an industry, we are working with the retail industry to develop more sustainable packaging as part of their sustainability plans. We are working with Walmart right now to test new paper-based packaging that will be compatible with the existing packaging equipment the industry utilizes, and potentially easier to recycle. The point is that businesses are addressing this issue already and will continue to do so because everyone will benefit their customers and businesses by finding solutions.

We believe the legislature should seriously look at an approach that is more incentive-based and would encourage businesses to create solutions to this recycling issue, rather than creating a non-profit entity that would have little incentive to keep costs low, find innovative solutions, and be concerned about efficiency.

Please reconsider your efforts and develop a better approach to this important issue.

Sincerely,

Jim Ehrlich
Colorado Potato Legislative Association
San Luis Valley, Colorado

April 7, 2022

Colorado General Assembly
Energy & Environment Committee

Re: HB22-1355 – AMEND

To Chair Valdez, Vice Chair Hooton, and the rest of the esteemed committee,

The Biodegradable Products Institute (BPI) appreciates the work done by the bill sponsors and many advocates that have assembled this piece of legislation. Effectively transforming the packaging and waste systems of Colorado is no easy feat, but we know it needs to be done.

At BPI, we agree that establishing a producer responsibility program can help improve our diversion rate immensely, by encouraging more recyclable, compostable, and reusable products while also providing critical funding for infrastructure. However, while this bill includes representation from the compost industry on the advisory board, which we appreciate, we worry it may hurt the industry here in Colorado and request the following amendments:

1) Include compost in the needs assessment. We recognize that CO is in the middle of a separate organics management plan, however we understand that to be a much broader project, whereas the EPR needs assessment gives an opportunity to specifically assess the costs and access to manage packaging waste, includes compostables. Because compost composes half of the state's diversion measurement, we feel it only makes sense to include it alongside recycling in a statewide assessment

2) Include funding for compost infrastructure. As written, producers of certified compostable packaging products are directed to pay into a system that solely benefits non-compostable products and infrastructure. Put simply, reimbursing local governments and service providers for recycling only will siphon money away from a beneficial and growing compost industry that could prove detrimental. If Colorado is set on limiting funds to composters for management of non-compostable contaminants only, then it regrettably means compostables shouldn't be paying into the system. Regrettably, because BPI supports EPR fees on compostables as a funding mechanism to assist composters in collecting and managing compost, including packaging.

Organic waste represents an entirely different stream with entirely different bins and processing facilities from recycling, so in developing of an "objective formula" to reimburse service costs, we'd ask that you direct whatever dues gathered from producers of certified compostable products to be proportionally spent in reimbursement for compost infrastructure, as those products are intended to be disposed. While those funds won't reimburse 100% of compost-related costs across the state, because compostable make up a small segment of the market for now, they can still be used to expand curbside collection or subsidize the many facilities in Colorado that accept compostable packaging.

After all this work, and recognition that we need to address recycling and composting to reach our goals as a state, it would be a shame for the legacy of this bill to include disadvantaging a beneficial industry that not only reduces waste but also methane greenhouse gas emissions. So again, we ask for the bill to include compost in the needs assessment, and in the funding for infrastructure, to make sure that we're addressing both major pathways for diversion. Please feel free to reach out with any questions.

Alexander Truelove

Alexander Truelove

Legislation and Advocacy Manager, BPI
alexander@bpi-world.org

The Biodegradable Products Institute (BPI) is North America's leading certifier of compostable materials, products, and packaging, with over 400 member companies worldwide. As a science-driven organization, BPI supports a shift to the circular economy by promoting the production, use, and appropriate end of lives for materials and products that are designed to fully biodegrade in specific biologically active environments. Our certification program has verified more than 13,000 items using ASTM standards as a baseline, plus additional requirements on PFAS, labeling, and eligibility criteria, all to help to keep organic waste out of landfills.



April 7, 2022

Representative Alex Valdez
Chair, House Energy and Environment Committee
200 E Colfax Room 307
Denver, CO 80203

Dear Chairman Valdez,

On behalf of the members of the Plastics Industry Association, I write to respectfully oppose House Bill 1355, a proposal to create a Producer Responsibility Program for Recycling.

The Plastics Industry Association represents manufacturers across the recycling supply chain including material suppliers, equipment manufacturers, plastic processors, and recyclers. With more than 8,500 Coloradans employed in the plastics industry, we are concerned about the negative impacts HB1355 will have on our workers.

As stated in the coalition memo that we endorsed and was shared with your committee, the legislation as written is overly complex, confusing, and will be very costly. At a time when consumers are already dealing with record high inflation, adding higher costs to everyday items at stores, restaurants, and pretty much any other retail establishment is the wrong thing to do.

While we understand and agree with the goal of modernizing and expanding recycling infrastructure in Colorado, HB1335 isn't the right way to do it. The lack of guardrails on the costs could result in runaway spending. The unlimited taxing authority that would be given to a massive new nonprofit organization (PRO) is unprecedented and very problematic. The definition of producer is unworkable and places requirements on manufacturers who won't have access to the required information.

Make no mistake, this is a significant fee. Without the necessary guardrails in place to ensure that is truly an efficient and effective extended producer responsibility program, this bill is likely to result into a significant burden on Colorado businesses and consumers.

We urge the committee to continue working on HB 1355 and avoid rushing it through before the end of session.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matt Seaholm", is written over a light blue horizontal line.

Matt Seaholm
Vice President, Government Affairs



April 7, 2022

The Honorable Alex Valdez
Chair, House Energy & Environment Committee
200 East Colfax, Room 307
Denver, CO 80203

The Honorable Edie Hooton
Vice Chair, House Energy & Environment Committee
200 East Colfax, Room 307
Denver, CO 80203

Re: Opposition to HB 22-1355, Producer Responsibility Program for Recycling

Dear Chair Valdez, Vice Chair Hooton, and Members of the Energy and Environment Committee:

The American Forest & Paper Association¹ (AF&PA) appreciates the opportunity to share our perspective on HB 1355 on behalf of our members and their employees who are an integral part of the circular economy. AF&PA must respectfully oppose HB 1355, which would require producers to create or participate in a product stewardship organization in order to sell or distribute products for use in Colorado. In Colorado the forest products industry employs over 6,200 individuals in facilities that produce packaging, sales displays, corrugated boxes and other products with an annual payroll of over \$330 million.²

The paper industry has a demonstrated, measurable record of success in making paper and paper-based packaging more circular and sustainable through market-based approaches. Extended producer responsibility (EPR) policies are typically applied as a solution for hazardous, hard-to-handle materials with low recycling rates, such as batteries, paint, mattresses, or electronics. For a highly recycled material like paper, with widely accessible collection programs and robust and resilient end markets, EPR could disrupt efficient and successful paper recycling streams in an attempt to improve the least effective streams. Moreover, mandating fees on packaging producers could increase consumer costs, unfairly burdening people with low and fixed incomes. We respectfully ask policymakers to focus on improving recycling for materials with low recovery rates, instead of creating mandates and fees for paper producers that could direct capital away from investing in recycling infrastructure.

¹ The American Forest & Paper Association (AF&PA) serves to advance U.S. paper and wood products manufacturers through fact-based public policy and marketplace advocacy. The forest products industry is circular by nature. AF&PA member companies make essential products from renewable and recycle resources, generate renewable bioenergy and are committed to continuous improvement through the industry's sustainability initiative — [Better Practices, Better Planet 2030: Sustainable Products for a Sustainable Future](#). The forest products industry accounts for approximately four percent of the total U.S. manufacturing GDP, manufactures nearly \$300 billion in products annually and employs approximately 950,000 people. The industry meets a payroll of approximately \$60 billion annually and is among the top 10 manufacturing sector employers in 45 states.

² Data sources: U.S. government, AF&PA, and RISI. Figures are the most recent available as of December 2020.

The Paper Industry Is Already a Responsible Producer

Paper recycling rates in the U.S. have consistently increased in recent decades, with nearly 66 percent of paper recovered for recycling in 2020.³ The paper industry recycles about 50 million tons of recovered paper every year — totaling more than 1 billion tons over the past 20 years. According to the EPA, more paper by weight is recovered for recycling from municipal waste streams than plastic, glass, steel, and aluminum combined.⁴ The paper industry has planned or announced around \$5 billion in manufacturing infrastructure investments by the end of 2023 to continue the best use of recycled fiber in our products, resulting in an over 8 million ton increase in available capacity.⁵

This success has been driven by the paper industry's commitment to providing renewable, sustainable, and highly recycled products for consumers. Recycling is integrated into our business to an extent that makes us unique among material manufacturing industries – our members own 114 materials recovery facilities and 80 percent of paper mills use some amount of recycled fiber. Any EPR system must fully and fairly credit the early, voluntary action our industry has taken to advance the recycling rate of our products, and strictly prohibit the use of fees generated by one material to subsidize development of recycling infrastructure for competing materials with lower recycling rates.

In fact, our industry's recycling rates are so successful that some products are approaching the maximum achievable recycling rate. The three-year average recycling rate for the material that would be most impacted by EPR, old corrugated containers (OCC), is already 92.3 percent.⁶ In addition, nearly 50 percent of Coloradans have access to residential curbside recycling and over 60 percent have access to drop off recycling programs.⁷

Colorado faces some barriers to recycling access that are unique to the state due to low municipality funding and underdeveloped recycling programs, as well as geographic access issues in rural and mountainous areas. Currently, six of the state's ten largest cities do not provide universal curbside recycling, and only 39 Colorado cities and towns bundle curbside recycling with trash.⁸ Since recycling programs in the U.S. are operated by local governments, it is critical that Colorado municipalities focus on ways to increase access to recycling in their areas of jurisdiction. An EPR program will not solve these broader access issues and may disrupt successful paper recycling streams by creating fees or mandates on paper and paper-based packaging.

EPR Policies Introduce Uncertainty in Fee Structure and Disrupt Flow of Material

EPR policies must be carefully designed to avoid creating fees or mandates that could disrupt efficient and successful paper recycling streams and that direct private sector funds away from investment in recycling infrastructure. HB 1355 requires funding to be given to local governments to pay for their collection of readily recyclable materials, but this is a cost-shifting mechanism common in other EPR programs that does not create added value or end markets for recyclable materials. The paper industry

³ <https://www.afandpa.org/news/2021/resilient-us-paper-industry-maintains-high-recycling-rate-2020>

⁴ https://www.epa.gov/sites/default/files/2021-01/documents/2018_ff_fact_sheet_dec_2020_fnl_508.pdf

⁵ The Recycling Partnership; Northeast Recycling Council. Last updated: December 2021

⁶ <https://www.afandpa.org/news/2021/resilient-us-paper-industry-maintains-high-recycling-rate-2020>

⁷ <https://www.afandpa.org/priorities/recycling/what-were-doing>

⁸ CPR News, "Colorado Is Getting Worse at Recycling. Here's Why, and 2 Ways The State Is Working To Fix It," Nov. 17, 2020

already contributes to economically sustainable recycling programs by purchasing and utilizing material sourced from residential collection programs in manufacturing new products.

This bill requires the stewardship organization to set product performance goals. There needs to be clear justification for the numbers and consideration of individual products and the voluntary action already underway. Recovered fiber markets are complex, efficient, and dynamic and are not served by regulations or prescriptive approaches to specify the use of recycled fibers or dictate what type of recovered fiber is used in products. Moreover, the preference for “post-consumer content” in packaging could be contrary to sustainability goals. Rather than drive increased paper recycling, recycled content minimums in paper products could: make markets for recovered fiber less efficient; prevent recovered fiber from going to highest value end use; raise the cost of production for new paper products; and narrow available choices for consumers.

Market forces and voluntary efforts have achieved strong gains in paper recycling and are expected to continue to do so in the future. Putting pressure on producers to arbitrarily change content in certain paper products interrupts the market-based utilization of recovered fiber, prevents recovered fiber from flowing to its highest value end-use, is counterproductive both economically and environmentally, and is inconsistent with the precepts of sustainability.

Recycling programs in the U.S. are operated by local governments, which have more freedom to tailor recycling programs to the needs of local communities. The record of highly centralized, command-and-control EPR programs in Canada and Europe offers no real proof of advantages over the market-based approaches and locally-operated programs prevalent in the U.S. In fact, a 2021 research paper performed by York University in Ontario concluded there is no evidence to indicate that the steward-operated EPR program in Canada will result in cost containment or increased recycling performance.⁹

Focus On Solutions for Products with Low Recycling Rates

Policymakers should take a more solution-oriented approach focused on problematic materials in the commingled residential collection stream. Paper recycling has enjoyed decades of success because of the industry’s investments, consumer education, the wide availability of recycling programs, and the efforts of millions of Americans who recycle at home, work, and school every day. The paper products industry is proud to be part of the recycling solution by providing renewable, sustainable, and highly recycled products for consumers.

We respectfully ask policymakers to focus on improving recycling for materials with low recovery rates that contaminate the recycling stream. Legislation such as SB 20-055, the Incentivize Development Recycling End Markets bill that passed in 2020, can serve to support increased recycling rates for low-performing materials without new burdens on other industries. AF&PA continues to support promoting increased participation in community recycling programs and other best practices, in addition to focusing on hard-to-recycle materials where there may not yet be a well-developed collection infrastructure or good recovery results.

In addition, we believe that the lack of producers serving as voting members on the current Advisory Board in HB 1355 is problematic. As the entities who are ultimately responsible for both creating and

⁹ Review of Recycle BC Program Performance, Dr. Calvin Lakhan, York University

House Energy & Environment Committee
HB 22-1355
April 7, 2022

complying with the producer responsibility plan, paper and paper-based packaging producers have a wealth of knowledge and expertise that should be drawn upon at the Advisory Board level. Moreover, the creation of an additional, outside entity that can reject or significantly amend the producer responsibility organization's plan is overly onerous and contrary to the goals of an independent, non-profit producer organization.

We encourage the Committee to avoid measures that might penalize paper and paper-based packaging and their existing successful recycling programs. We look forward to continuing our work with the State of Colorado. Please feel free to contact Elizabeth Olds, Manager, Government Affairs at Elizabeth.Olds@afandpa.org for further information.

Respectfully,

A handwritten signature in black ink, appearing to read "Terry J. Webber". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Terry Webber
Vice President, Industry Affairs
American Forest & Paper Association



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April 7, 2022

House Energy and Environment Committee
200 E Colfax Avenue
Denver, CO 80203
Submitted via: online testimony form

Written Testimony: House Bill 22-1355 – Concerning the Creation of the Producer Responsibility Program for Statewide Recycling

Dear House Energy and Environment Committee,

Thank you for the opportunity to provide written testimony on *House Bill 22-1355 – Concerning the Creation of the Producer Responsibility Program for Statewide Recycling* (HB 22-1355), which we respectfully oppose unless amended.

Founded in 1933, the Foodservice Packaging Institute (FPI) is the leading authority on foodservice packaging in North America. FPI supports the responsible use of all foodservice packaging, while advocating for an open and fair marketplace for all materials. Our members include: raw material and machinery suppliers, manufacturers, distributors and purchasers of foodservice packaging. FPI represents approximately 90 percent of the industry.

The foodservice packaging industry is committed to reducing the impact of its products on the environment and is dedicated to increasing their recovery. FPI has several special interest groups that bring together the supply chain to develop and promote economically viable and sustainable recovery solutions for foodservice packaging. These special interest groups include the Paper Recovery Alliance, Plastic Recovery Group, Paper Cup Alliance and Foam Recycling Coalition. More information on these groups and their efforts can be found [here](#).

As part of our commitment to increasing the recovery of foodservice packaging, we are supportive of policy approaches that advance this effort through systems such as recycling and composting. With respect to extended producer responsibility (EPR) programs, it is our view that programs should be based on the principles of shared responsibility, fairness and system effectiveness and efficiency.

It is important to note that we support the goals of HB 22-1355 and the need to improve Colorado's recycling system. FPI is a member of Recycle Colorado and has had the opportunity to participate in a number of discussions and working sessions relating to the development of the bill. We appreciate and recognize all of the hard work and collaboration that led to HB 22-1355's introduction.

When the initial amendments were shared yesterday, we were pleased to note some of our earlier concerns had been addressed. However, it is our view that there are some outstanding issues that require more time for discussion (and amendments) through the legislative process. We are concerned that given the late introduction of HB 22-1355, the opportunity for these actions is limited.

As written, the requirement that 100% of the net recycling services costs of public and private recycling service providers performing services under the program be reimbursed through producer dues is not reflective of a shared responsibility. It may be preferable to begin the program as a partnership between parties to allow for a smoother and more predictable transition for all stakeholders from an operational and financial standpoint.

Further, FPI has concerns with respect to the dues collected from producers of compostable packaging being used primarily for recycling services. While we acknowledge that some funds would be directed to address contamination at compost facilities, this effort alone will not support the increased diversion of compostable packaging. It is our perspective that dues from producers of compostable packaging should be directed to services relating to composting, including investments in composting infrastructure.

For the reasons outlined above, we are opposed to HB 22-1355, unless amended. FPI would be pleased to continue discussing these comments with you and other stakeholders, in order to develop an EPR program for Colorado. We thank you for your consideration of this feedback.

Sincerely,

A handwritten signature in purple ink that reads "CAROL PATTERSON".

Carol Patterson
Vice President, Government Relations
cpatterson@fpi.org



The power of packaging in balance.™

AMERIPEN
American Institute for Packaging and the Environment

Testimony
in Opposition to
Colorado HB 1355
Extended Producer Responsibility for Packaging

House Energy and Committee
April 7, 2022

Chair Valdez, Vice-Chair Hooton and Members of the House Energy and Environment Committee.

AMERIPEN – the American Institute for Packaging and the Environment – appreciates the opportunity to submit testimony on House Bill 1355 that would establish an extended producer responsibility (EPR) program in Colorado for packaging. While AMERIPEN supports certain legislation to implement packaging producer responsibility, this bill unfortunately doesn't quite resemble a shared responsibility model of packaging producer responsibility. We acknowledge the work that Representative Cutter and the sponsors have put into this legislation and do believe it is generally on the right track. But there are still flaws in this legislation and we therefore cannot support it. We would welcome the opportunity to work with the Chair, the entire Committee, and stakeholders in Colorado to address packaging producer responsibility in a way that will work for all stakeholders and improve recycling in the state.

AMERIPEN is a coalition of stakeholders dedicated to improving packaging and the environment. We are the only material neutral packaging association in the United States. Our membership represents the entire packaging supply chain, including materials suppliers, packaging producers, consumer packaged goods companies and end-of-life materials managers. We focus on science and data to define and support our public policy positions and our comments are based on this rigorous research rooted in our commitment to achieve sustainable packaging, and effective and efficient recycling policies. The packaging industry supports nearly 19,000 jobs and accounts for more than \$6.4 billion in total economic output in Colorado.

Packaging plays a vital role in Colorado, ensuring the quality of consumer goods as they are manufactured, shipped, stored, and consumed. Packaging has value and none of it belongs in landfills, roadsides or waterways. We need to recover it to be recycled and reused, and no one knows better how to do that than the AMERIPEN members who design, supply, produce, distribute, collect, and process it. They are driving innovation, designing for better environmental performance to boost recycling and evolve the recycling infrastructure.

AMERIPEN supports policy solutions, including packaging producer responsibility, that are:

- **Results Based:** Designed to achieve the recycling and recovery results needed to create a circular economy.
- **Effective and Efficient:** Focused on best practices and solutions that spur positive behaviors, increase packaging recovery, recapture material values and limit administrative costs.
- **Equitable and Fair:** Focused on all material types and funded by shared cost allocations that are scaled to make the system work and perceived as fair among all contributors and stakeholders.

HB 1355 does not create a shared responsibility system where producers as well as local governments contribute to the recycling system in Colorado. HB 1355 establishes a mandate for packaging producers to participate in a program that will simply shift the cost of the current recycling system to producers of packaged goods to support municipal governments and also mandate that producers pay for the creation of a solid waste system in all areas of the state.

AMERIPEN Key Concerns:

1. Problematic Definition of “Packaging”: This definition is critical in determining the base of any packaging producer responsibility program in Colorado. **AMERIPEN would prefer a definition that covers consumer facing packaging that will be disposed of by the consumer.**

2. 100% Coverage of Recycling Service Costs: HB 1355 defines recycling services as: capital improvements to recycling programs; the collection, transportation, sorting and processing of covered materials; the public education about recycling; and the disposal of non-recyclable collected materials. HB 1355 mandates that producers cover 100% of recycling service costs for packaging. Additional collection services, frequency of collection and other collection factors have a clear nexus to municipally controlled decisions, constituent service and the ultimate costs of this aspect of a recycling program. The producer responsibility organization (PRO) will have no control over those collection factors yet will be responsible for 100% of the costs. **AMERIPEN prefers a more reasonable pro-rated formula that accounts for the fact that collection costs are a municipal commitment that is decided at the local level but provides for reasonable collection and transportation cost reimbursements from producers to transport recyclable material to processing.**

3. Advisory Board: AMERIPEN agrees with the placement of an advisory board for packaging producer responsibility programs but the producer seat in HB 1355 is a non-voting member. **AMERIPEN feels strongly that the PRO seat should also be a voting member of the Advisory Board.**

4. Producer Fee Date: Currently, in the bill the PRO fees are due January 1, 2025, and the PRO plan is submitted on February 1, 2025. **AMERIPEN prefers the date of dues to match the date the PRO plan gets approved, rather than a few months before.**

5. No Cap on Department Administrative Fees –AMERIPEN believes that all administrative costs should be reasonable and should be capped on an annual basis.

In conclusion, AMERIPEN supports policy solutions, including packaging producer responsibility, that are results based, effective and efficient, and equitable and fair – and that actually improve recycling. HB 1355 does not satisfy those principles and we therefore encourage this Committee to not support the bill. We would like to continue to work with Representative Cutter and members of the committee to make edits to this legislation, that will create a solution that will increase packaging recovery and recycling in Colorado in a shared, meaningful and responsible way. We have done and are currently doing this in good faith in multiple states throughout the country.

Testimony in OPPOSITION
to
House Bill 1533
in
Colorado House Energy and Environment Committee
on
April 7, 2022

The Flexible Packaging Association (FPA) is submitting testimony in **opposition to HB 1355**, “Concerning the Creation of the Producer Responsibility Program for Statewide Recycling,” which creates a producer responsibility program to provide recycling services to covered entities in the state. The program will be implemented by a nonprofit organization in consultation with a newly-created advisory board and overseen by the Department of Public Health and Environment.

I am Sam Schlaich, Counsel, Government Affairs of FPA, which represents flexible packaging manufacturers and suppliers to the industry in the U.S. Flexible packaging represents over \$34 billion in annual sales; is the second-largest and fastest-growing segment of the packaging industry; and employs approximately 79,000 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, 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 have become 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, increasing the recycling of solid waste from packaging, and creating a working, circular economy. Unfortunately, we find that HB 1355, in its current form, is premature and needs to be further developed before moving forward.

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. FPA believes 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.

We also believe that EPR 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 have jointly drafted a set of principles to guide EPR for flexible packaging (<https://www.flexpack.org/end-of-packaging-life>). This dialogue, which looked at the problems and opportunities for EPR to address the needs of the flexible packaging industry to reach full circularity for over a year. It is with this background that FPA provides this testimony to improve HB1355, so that it provides the necessary elements for the improvement of collection and infrastructure investment and development of advanced recycling systems to allow for collection and recycling to a broader array of today's packaging materials, including flexible packaging; and quality sorting and markets for currently difficult-to-recycle materials.

While HB 1355 is well-intentioned, it is underdeveloped as currently written and FPA must respectfully **oppose HB 1355** but stands ready to assist in creating a measure that comports with the PSI/FPA elements and supports a meaningful EPR program for packaging; providing the necessary investment in new infrastructure and markets for all packaging, including flexible packaging, and addresses the evolving needs and concerns of Colorado.

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 410-694-0800 or SSchlaich@Flexpack.org.

Respectfully,

Sam Schlaich

Sam H. Schlaich, J.D.

Government Affairs Counsel, FPA



April 7, 2022

House Energy & Environment Committee
Honorable Representative Alex Valdez, Chairman
Members of the House Energy and Environment Committee
(Delivered via email)

Dear Chairman Valdez and Committee Members,

On behalf of the Grand Junction Area Chamber of Commerce, an organization of over 800 mostly small businesses employing over 37,000 people in Mesa County, I ask that this Committee vote to postpone indefinitely or delay action on House Bill 1355.

This bill is an attempt to create a more comprehensive recycling program in the state, but it unfairly imposes the cost of this idea on businesses that cannot afford to pay for it. Previous experiences have shown that when there are more barriers to doing business in our state, the worst harms are felt by the hard-working families of Colorado.

In the city of Grand Junction and the surrounding area alone family-owned food and beverage companies such as Enstrom and Talbott would be strangled by this new regulation. Additionally, it targets food producers that are a large portion of our local economy and an important industry to American food independence.

I also write to you today with significant concern over how quickly this bill has moved thus far, and how few stakeholders were involved in this process. Government action that is as far-reaching as this proposition cannot be rushed, and must include input from the people and organizations it seeks to regulate. There are also concerns about the mechanism for implementation contained in the bill.

HB 1355 is a bill with extensive negative consequences that have not been fully considered, and must not be allowed to progress.

Sincerely,

A handwritten signature in black ink that reads 'Diane Schwenke'.

Diane Schwenke, President & CEO
Grand Junction Area Chamber of Commerce



April 7, 2022

Officers

President
Pierce Louis
Dirt Hugger

Past President
Brian Fleury
WeCare-Denali

Vice President
Jennifer Trent
Iowa Waste
Reduction Center
University of
Northern Iowa

Treasurer
Jeff Ziegenbein
Inland Empire Regional
Composting Authority

Secretary
Ryan Cooper
Rubicon Global

Board of Directors

Eileen Banyra
Community Compost Company

Meredith Danberg-Ficarelli
Common Ground Compost

Joe DiNorscia
Laurel Valley Soils

Gary Gittere
McGill Premium Compost

Tim Goodman
NatureWorks

Jorge Montezuma
Atlas Organics, Inc.

Elliot Schneider
City of St. Peters Earth Centre

Chris Seney
Republic Services

Melissa Tashjian
Compost Crusaders

Samantha Winkle
Waste Connections

Bob Yost
A-1 Organics

Executive Director
Frank Franciosi

The Hon. Alex Valdez, Chair
Colorado General Assembly
House Energy and Environment Committee
200 East Colfax Avenue
Denver CO 80203

Dear Chair Valdez and Committee Members:

The US Composting Council, a national organization representing more than 2,000 individuals and 700 companies and organizations in the compost manufacturing industry across the U.S., is writing to support HB22-1355 with the proposed amendment.

First, we should mention that we are very pleased with the efforts of the bill sponsor to engage all parties in the recycling space. We consider the compost manufacturing industry a vital part of these efforts.

Secondly, we appreciate the inclusion of a compost manufacturer on the PRO advisory and the specific focus on the purpose of the bill to address contamination at compost and recycling facilities. While we would prefer that funding be expanded for the *infrastructure* needed to develop the compost industry to take the compostable materials being generated by packagers and requested by citizens, we acknowledge the ability to use the EPR generated funds to address equipment and processes at compost facilities that must be purchased by our industry for that purpose is helpful to our industry.

We request that you revise the definition of composting in the bill language to be updated to the current, accepted AAPFCO (American Association of Plant and Food Control Officials) definition:

Compost – is the product manufactured through the controlled aerobic, biological decomposition of biodegradable materials. The product has undergone mesophilic and thermophilic temperatures, which significantly reduces the viability of pathogens and weed seeds, and stabilizes the carbon such that it is beneficial to plant growth.

We appreciate the opportunity to be engaged at early stages and as this bill develops and are ready to answer any questions or provide any feedback or research that is needed.

Sincerely,

Frank Franciosi, Executive Director



GreenSheen Paint
1055 S. Jason St.
Denver, CO
Greensheepaint.com
(303) 514-3955

Letter of Support for HB22-1355 Producer Responsibility Program for Recycling

Dear Respected Elected Officials of the House Energy & Environment Committee,

Thank you for the opportunity to provide written testimony in support of HB22-1355, Producer Responsibility Program for Recycling. My name is Emily Wilson and I'm the Director of Special Projects & Circularity for GreenSheen Paint. GreenSheen Paint is a local latex paint recycling company that creates recycled content paint from material collected through the state's Paint Stewardship Program, PaintCare. The first true producer responsibility program Colorado implemented. I am also on the Board of Directors for Recycle Colorado and Circular Colorado.

We operate facilities in Colorado, Washington, Arizona and now New York. We recycle millions of gallons of paint annually and have a paint-to-paint recycling rate of over 90%. While paint containers might not be the first material stream one thinks about when considering the materials impacted by the proposed bill, we at GreenSheen believe in supporting all efforts we feel further Colorado in waste diversion and economic advancement. HB22-1355, if passed, would solidify Colorado as a leading state for innovation in waste diversion while providing ample resources for local governments to expand recycling programs to residents which is why we at GreenSheen are in full support of the bill.

Prior to my work at GreenSheen Paint, I worked for the Colorado Department of Public Health and Environment (CDPHE) as an Environmental Protection & Recycling Specialist for nearly five years. My last year at the department I was solely tasked with conducting the research for and writing the producer responsibility literature review and subsequent policy recommendations directed by SB20-055. Additionally, I oversaw the Colorado Paint Stewardship Program run by PaintCare, the producer responsibility organization and worked very closely with this program and PaintCare staff.

Before I continue, I would like to clarify that I am not speaking on behalf of CDPHE, and that my comments independently stem from my experience working on and researching producer responsibility per SB20-055 and overseeing the PaintCare program.

To complete the literature review directed by SB20-55, I spent hours researching producer responsibility programs throughout the county and in other countries. I read scientific peer-review studies, government reports, international reports, attended informational webinars and conducted interviews, just to name a few sources. Through my extensive research I've come to understand just how helpful producer responsibility can be. In my expertise, I believe it provides a model for waste diversion that has minimal costs associated with it but collectively can raise money for local governments and recycling in general. It provides a consistent flow of money that has saved local governments money or has fully financed collection programs. Producer responsibility works well when all stakeholders are involved in crafting a program, which has happened here in Colorado. Not only did the CDPHE host multiple stakeholder meetings, we also provided a public comment period before finalizing our policy recommendations. In addition to the stakeholder work conducted by CDPHE, Recycle Colorado also hosted a series of informational meetings and provided members the opportunity to submit feedback at multiple points before and after the creation of HB22-1355. In my personal opinion the current bill proposed is a culmination of vast stakeholder feedback and shows a diverse array of stakeholders working together to advance waste diversion in Colorado.

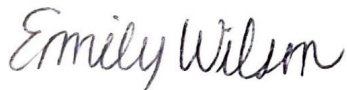
In my experience overseeing PaintCare for almost five years, I found (again, not speaking on behalf of CDPHE) PaintCare to be incredibly responsive with regulatory requests and easy to work with. Having a producer responsibility organization (PRO) or a nonprofit enterprise with compulsory dues run the Paint Stewardship Program allows for regulated centralized management for a producer responsibility program while avoiding TABOR implications and adhering to all constitutional obligations for a state program. This model also allows for a governing body, CDPHE in this instance, to still maintain regulatory oversight.

In my personal opinion, PaintCare has been highly successful in the state of Colorado. Multiple millions of gallons of paint have been diverted from Colorado landfills and recycled mainly into new paint by GreenSheen. Additionally, PaintCare through this program has saved local governments hundreds of thousands of dollars based on my own research while working for the department. I've heard anecdotally about one facility specifically that said if it wasn't for savings created by PaintCare, the collection operation would not be able to stay open year round.

Again, I appreciate this opportunity to provide written testimony in support of HB22-1355 on behalf of GreenSheen Paint and hope you take my account into consideration.

I'm available to answer additional questions via the contact information below.

Respectfully,

A handwritten signature in cursive script that reads "Emily Wilson".

Emily Wilson
Director of Special Projects & Circularity
GreenSheen Paint
ewilson@greensheepaint.com
(720) 908-0285



GreenSheen Paint
1055 S. Jason St.
Denver, CO
Greensheepaint.com
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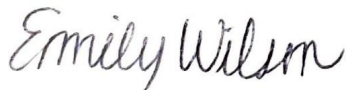
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A handwritten signature in cursive script that reads "Emily Wilson".

Emily Wilson
Director of Special Projects & Circularity
GreenSheen Paint
ewilson@greensheepaint.com
(720) 908-0285

April 6, 2022

Honorable Alex Valdez, Chair
House Committee on Energy and Environment
200 East 14th Avenue Room A
Denver, CO 80203

RE: House Bill 22-HB1355 (Cutter) - Extended Producer Responsibility - Oppose

Dear Chair Valdez and Members of the Committee on Energy & Environment:

On behalf of the Household & Commercial Products Association (HCPA)¹, I respectfully oppose HB 22-1355, which seeks to establish an Extended Producer Responsibility (EPR) program.

HCPA has worked with legislatures across the country in response to product stewardship proposals. Our member companies are working to achieve goals made to improve the design of packaging through source reduction, improved recyclability, and increased recycled content. Accordingly, HCPA supports materials management policies that improve fractured recycling systems, and programs that embrace a shared responsibility across the packaging value chain to reach a circular system harmonized across state lines. As a member of the Recycling Leadership Council (RLC), HCPA joined consumer facing industry partners and NGOs in a call for action to address plastics in our landfills and the environment. The RLC is striving for circular supply chains that cycle materials through the economy and recently released a Blueprint for America's Recycling System. As such, HCPA is committed to working with Colorado policymakers to achieve a comprehensive solution that bolsters existing recycling infrastructure through standardization for efficient scalable systems, incentivizes materials market development, and provides transparency and accountability in data collection.

HCPA's opposition to the current proposal stems from our standing on shared responsibility, as the burden of progress must be absorbed across the value chain in order to drive innovation and

¹ The Household & Commercial Products Association (HCPA) is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$180 billion annually in the U.S. of familiar and trusted consumer products that help household and institutional customers create cleaner and healthier environments. HCPA member companies employ hundreds of thousands of people globally. Products HCPA represents include disinfectants that kill germs in homes, hospitals and restaurants; air fresheners, room deodorizers, and candles that eliminate odors; pest management products for home, lawn and garden, and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day.

systemic change. Specifically, we are concerned by Sec. 25-17-605(VI)(i) which says: *“Include reimbursement rates for one hundred percent of the net recycling services costs of the recycling services provided by service providers under the program consistent with the requirements of section 25-17-606”*. HCPA believes the provision is contradictory to the declarative clause in Section 25-17-602 (1)(f) which states: *“All parties have the obligation to share in the responsibility to reduce negative impacts of end-of-use management for covered materials...”*

If enacted, the executing language of the bill would impose all costs of the program on producers without regard to necessary incentives, transparency, and accountability measures for all stakeholders. HCPA is concerned that, as drafted, the producer responsibility organization would be responsible for services for businesses, schools, public places, and multifamily housing. This broad scope of responsibility would interfere with commercial recyclers and deviates from what should be a focus on residential recycling. We suggest this matter be further studied to assess the potential impact on improving the state’s recycling system, focusing resources, and strengthening materials markets.

Furthermore, HCPA is concerned that producers who are responsible for fees, collection, and program execution are excluded from the statewide recycling advisory board. Additionally, the advisory board would have outsized influence over key decisions, such as determining post-consumer recycled content requirements, which must be based on the capacity of the national recycling system and material availability. Manufacturers and formulators of products in scope of this bill are important subject matter experts and must be represented on the advisory board.

We believe there are other technical issues to be addressed, including sequential timing and order of fee due dates, plan submission and approval, and the effective date of product sales prohibition without program participation. HCPA thanks the author for the unique considerations related to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and believes this language could benefit from minor changes for clarity.

For these reasons, HPCA respectfully opposes HB 22-1355 and welcomes any opportunity to further discuss these concerns.

Sincerely,



Christopher Finarelli
Director, State Government Relations & Public Policy - Western Region



american cleaning institute®

April 7, 2022

Representative Alex Valdez
Chair, Energy & Environment Committee
Colorado State House of Representatives

Representative Edie Hooton
Vice Chair, Energy & Environment Committee
Colorado State House of Representatives

RE: HB22-1355 – Concerning the creation of the producer responsibility program for statewide recycling –
Opposed

Thank you for the opportunity to share our perspective on House Bill 1355 which is being heard before your committee. The American Cleaning Institute® (ACI) is the trade association representing the \$60 billion U.S. cleaning products market. ACI members include the formulators of soaps, detergents and general cleaning products used in household, commercial, industrial and institutional settings; companies that supply ingredients and finished packaging for these products; and oleochemical producers. ACI and its members are dedicated to improving the health and quality of life through sustainable cleaning products and practices. ACI's mission is to support the sustainability of the cleaning products industry through research, education, outreach and science-based advocacy.

The optimization of ACI member company product packaging is a priority to deliver the performance of the products ACI members produce. It is for this reason that we have established guiding principles that help us ensure our products which provide hygiene and cleanliness do so in a manner that is environmentally sound, socially responsible and economically viable without compromising the ability of future generations to meet their needs. Our members have collaborated on guidelines to help direct packaging design and manufacturing. And we have charted a roadmap to help us achieve 100% collection and reuse, recycling or composting of cleaning product packaging waste by 2040.

Today, many ACI members are actively participating in and funding initiatives to prevent plastic waste from entering the environment. Here are some of those projects.

- Several ACI members have partnered with [Plastic Bank](#), an award-winning social enterprise that aims to help prevent plastic reaching our oceans by monetizing waste while improving lives.
- [Loop](#) is a global circular shopping platform designed to eliminate the idea of waste by transforming the products and packaging of everyday items from single use to durable, multi-use designs.
- Alongside their recyclability commitments, our members are working to be more transparent about how people can recycle their products. The [How2Recycle](#) label is transforming this by providing clear on-package labels to help all of us understand what we should be placing in the recycle bin.
- The [Alliance to End Plastic Waste](#) aims to find solutions by bringing together people and organizations from across the value chain.
- The Ellen MacArthur Foundation's [Global Commitment for a New Plastic Economy](#) aims to eliminate problematic or unnecessary plastic packaging and ensure 100 percent of plastic packaging can be easily and safely reused, recycled or composted by 2025.

ACI appreciates that the General Assembly is lending time to the issue of packaging recycling in the state. We recognize that industry has a role to play in ensuring a sustainable future. The proposed bill would place greater

responsibility on consumer goods companies to finance the recovery of their packaging. ACI continues to deliberate what a producer responsibility organization should look like to garner the greatest results.

At this time ACI cannot support this legislation in its entirety but is appreciative of the dialogue that the bill's proponents have been engaged in thus far. We have reviewed the bill and have identified sections that warrant further consideration and revisions. We share those below in hopes that continued dialogue will take place around these sections, among others, before this policy is implemented in Colorado.

- **Shared Responsibility** – The legislative declaration states that “all parties have the obligation to share in the responsibility to reduce negative impacts of end-of-use management for covered materials...” however the legislation requires a plan that includes reimbursements from producers that cover one hundred percent of the net recycling service costs.
- **Role and Authority of Advisory Board** – We appreciate the necessity to bring in other stakeholders in the form of an Advisory Board within an extended producer responsibility policy structure. The Advisory Board proposed in this legislation has significant authority – particularly as it relates to recommending a projected scenario to be included in a plan proposal. It is our opinion that producers should have a voting position on the Advisory Board as do the other members of the Advisory Board.
- **Scope of Program** – It is our understanding that this program is intended to address consumer, curbside packaging. However, this legislation includes a provision that updated proposed plans should include nonresidential covered entities. An adjustment such as this could be disruptive to how the plan is performing and should remain focused on consumer, curbside material. It is also unclear if secondary or tertiary packaging would be included in the scope of this program which often have separate and differentiated recycling needs.
- **Timelines** – There are many deadlines included in this legislation by which certain actions shall be taken. It is important that the timelines for these actions be realistic and provide for enough time for certain activities to take place. One deadline that needs updating is the January 1, 2025 date by which producers need to pay fees to the organization. This date likely needs to be pushed back to reflect the fact that a program plan may not even be submitted for approval yet. A more realistic date for producer fees to begin should be July 1, 2025 when a plan will have likely been approved and the contingent prohibition on the sale of covered materials begins.

We hope the General Assembly will take more time to contemplate ACI input on this policy. ACI looks forward to being a priority stakeholder to the development of such legislation or providing necessary input regarding the performance of our products and packaging to achieve desired policy goals.

Sincerely,

Brennan Georgianni
Director, State Government Affairs
BGeorgianni@cleaninginstitute.org

April 7, 2022

Dear members of the Energy and Environment Committee,

The Association of Plastic Recyclers (APR) strongly supports the adoption of HB22-1355 to create a producer responsibility program to enhance the recycling of packaging and printed paper in Colorado. The proposed Producer Responsibility program would require consumer brands to finance the recycling of their packaging and printed paper and invest in expanding and modernizing local recycling infrastructure so that programs can handle new packaging materials as well as those not currently recycled.

The Association of Plastic Recyclers (APR) is the international trade association representing the plastics recycling industry. Our membership includes independent recycling companies of all sizes and processing numerous resins, as well as consumer product companies, equipment manufacturers, testing laboratories, organizations, and others committed to the success of plastics recycling.

There is not enough plastics collected for recycling in the US to meet the growing regulatory and corporate commitments to use more recycled plastics to make new products. APR recognizes Producer Responsibility as a crucial policy tool to increase the supply of recycled materials into the economy. Many plastics recyclers across the US are not operating at full capacity and need more material to meet the demands for recycled resin. This policy is greatly needed to increasing the supply of recycled plastics to meet existing and future manufacturing needs.

Colorado's average recycling rate is currently an abysmal 15%. Enacting HB22-1355 could *triple* recycling rates for residential materials in Colorado, as existing packaging EPR programs around the world have achieved recycling rates over 70%. Recycled plastics can save 75-88% of the energy used to make virgin plastics and reduce GHG emissions by 70%. Increased recycling of plastics and other materials will Colorado reduce carbon pollution and move toward its greenhouse gas reduction goals.

Colorado residents deserve a modern, effective recycling system, and businesses need clean, reliable, and domestic sources of recycled materials to make new products and packaging. We urge you to support HB22-1355 for EPR for packaging and paper products to reinvigorate recycling, reduce waste, and strengthen domestic supply chains.

Sincerely,



Steve Alexander
President, Association of Plastic Recyclers (APR)
steve@plasticsrecycling.org



Scott Cassel
Chief Executive Officer/Founder

Board of Directors

Tom Metzner – **President**
CT Dept. of Energy and Environmental Protection

Scott Klag – **Vice President**
Metro, OR

Jennifer Semrau – **Treasurer**
WI Dept. of Natural Resources

Joe Rotella – **Clerk**
RI Resource Recovery Corporation

Racheal Ajayi
MO Dept. of Natural Resources

Mallory Anderson
Hennepin County, MN

Abby Boudouris
OR Dept. of Environmental Quality

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Honorary Directors

Sego Jackson
Seattle Public Utilities, WA

Walter Willis
Solid Waste Agency of Lake County, IL

April 6, 2022

Representative Alex Valdez, Chair
Representative Edie Hooton, Vice Chair
House Energy and Environment Committee
Colorado General Assembly
200 E Colfax Avenue
Denver, CO 80203

RE: Support for HB 22-1355, Producer Responsibility Program For Recycling.

Dear Chair Valdez, Vice Chair Hooton, and Members of the Committee:

Thank you for the opportunity to submit testimony in support of HB 22-1355, which will create an Extended Producer Responsibility (EPR) program for consumer packaging, paper products, and single-use food service ware in Colorado with sustainable funding from producers.

Based on two decades of rigorous research and practice, the Product Stewardship Institute (PSI) believes this legislation is critical to establishing a circular economy for Colorado that will modernize the recycling system and increase reuse and recycling across the state.

PSI is a national nonprofit working to reduce the health and environmental impacts of consumer products from design and production through end-of-life. We work closely with 47 state agency members, hundreds of local government members, and more than 100 partners from companies, organizations, universities, and international governments, including Eco Cycle. Since 2000, PSI and our members have played a significant role in enacting most of the 125 U.S. EPR laws on 15 products in 33 states. This includes Colorado's EPR law for leftover paint, enacted in 2014.

PSI created the model for packaging EPR that is foundational to HB 22-1355 based on best practices from across the country and around the world. Our model has also shaped the EPR policy at the center of the federal Break Free from Plastic Pollution Act, as well as bills in New York, Massachusetts, Vermont, Connecticut, Maryland, and other states around the country. PSI's policy model also incorporates our landmark 2020 mediated agreement between state and local government agencies, the Flexible Packaging Association (FPA), and several environmental groups and recyclers on elements of effective EPR for flexible packaging.

Over the past two years, PSI has worked closely with state and local government agencies, waste management companies, environmental groups, and key packaging producers represented by FPA, the American Institute for Packaging and the Environment (AMERIPEN), the Sustainable Food Policy Alliance (SFPA), and others to continually update and refine our packaging EPR policy model and shape legislation in states across the country. Although they have historically opposed packaging EPR in the U.S., consumer brands and packaging manufacturers now recognize that they cannot reach their sustainable packaging goals without significant improvements to the recycling system. Producers are finally ready for a circular economy that can help them achieve their sustainability goals – and EPR provides the bedrock for this system.

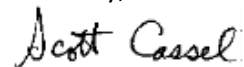
Currently, there is little incentive for producers to choose sustainable packaging because they are not held accountable for the impacts of the materials they use. To drive real transformation, producers must be responsible for both the upstream design and downstream management of their packaging materials. Producers that benefit from the sale of packaged goods are in the best position to make design choices regarding the materials they choose, including which consumer goods can be sold in reusable packaging, whether packaging materials should be recyclable or compostable, and the amount of post-consumer recycled content that is feasible in each format. EPR provides the systemic change that is needed to reinvigorate recycling and reduce waste.

Packaging EPR has been successfully implemented throughout Europe and Asia for over 35 years, and in five Canadian provinces for over 15 years. Many of these existing programs have achieved recycling rates over 80% and contamination rates below 10%. HB 22-1355 contains all of the necessary elements of successful packaging EPR programs from around the world, and also incorporates cutting-edge elements that have emerged in the U.S. such as a multi-stakeholder advisory council to ensure meaningful input into the program from Colorado recyclers, local governments, environmental groups, and other organizations. Importantly, this bill will *not* allow technologies that produce fuel from plastics to count as recycling. PSI strongly supports this approach, which is consistent with the measured approach taken in Oregon's new packaging EPR law.

PSI respectfully urges the Committee to report out HB 22-1355 favorably. The bill will require producers to provide sustainable funding to relieve municipalities of the financial burdens they currently face in operating recycling programs. It also provides clear, consistent consumer education on the proper end-of-life management of consumer packaging to reduce confusion and contamination. In addition, the bill will create jobs, reduce waste and greenhouse gas emissions, and significantly invest in the transition to a circular economy throughout the state.

If you have any questions, please feel free to contact me at (617) 236-4822, or Scott@ProductStewardship.US.

Sincerely,



Scott Cassel
Chief Executive Officer/Founder



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TESTIMONY

Jacob Cassady
Director, Government Relations

On Behalf of
The Association of Home Appliance Manufacturers

Before the Colorado House
Energy & Environment Committee

HEARING

HB 22-1355:
Extended Producer Responsibility for Packaging

April 7, 2022

Chair Valdez, Vice-Chair Hooton and members of the House Energy & Environment Committee, HB 22-1355 would establish a system of addressing packaging waste and recycling in Colorado. For the reasons outlined below, the Association of Home Appliance Manufacturers (AHAM) is strongly opposed to HB 22-1355 but is willing and committed to work with you on proven solutions that are effective.

AHAM represents more than 150 member companies that manufacture 90% of the major, portable and floor care appliances shipped for sale in the U.S. Home appliances are the heart of the home, and AHAM members provide safe, innovative, sustainable and efficient products that enhance consumers' lives.

The home appliance industry is a significant segment of the economy, measured by the contributions of home appliance manufacturers, wholesalers, and retailers to the U.S. economy. In all, the industry drives nearly \$200 billion in economic output throughout the U.S. and manufactures products with a factory shipment value of more than \$50 billion.

In Colorado, the home appliance industry is a significant and critical segment of the economy. The total economic impact of the home appliance industry to Colorado is \$1.7 billion, nearly 12,000 direct and indirect jobs, \$260.9 million in state tax revenue and more than \$610.5 million in wages.

HB 22-1355 would require a stewardship organization to implement and manage a packaging stewardship program for the recovery of all packaging materials, which will penalize all packaging materials and consumer goods while not addressing the environmental and social impact of plastic packaging. Assigning costs to all packaging material does not solve the primary problem of plastic waste and provides a disincentive to transition to non-plastic packaging.

The home appliance industry takes its responsibility to provide solutions to help reduce waste seriously. Manufacturers continue to evaluate and research more sustainable alternatives for product packaging. The industry regularly collaborates with environmental advocates and policymakers to achieve goals like greater appliance efficiency. Current all-material packaging EPR programs essentially just fund the status quo, expensive and complex. AHAM supports solutions that are simple, effective and efficient.

Approach Would Negatively Impact the Recycling System in Colorado

In 2016, Connecticut established a Task Force to Study Methods for Reducing Consumer Packaging that Generates Solid Waste, which included a review of EPR. The Task Force released its recommendations in February 2018 after a year of stakeholder meetings, expert testimony, and public comments. The final recommendations did not recommend product stewardship as a means of reducing consumer packaging that generates solid waste with concerns over the creation of a recycling monopoly through a product stewardship organization, pushing Colorado recycling firms out of business and forcing higher costs on the collection and recycling system as a whole.

EPR is Not a Proven Solution to Waste Management Challenges

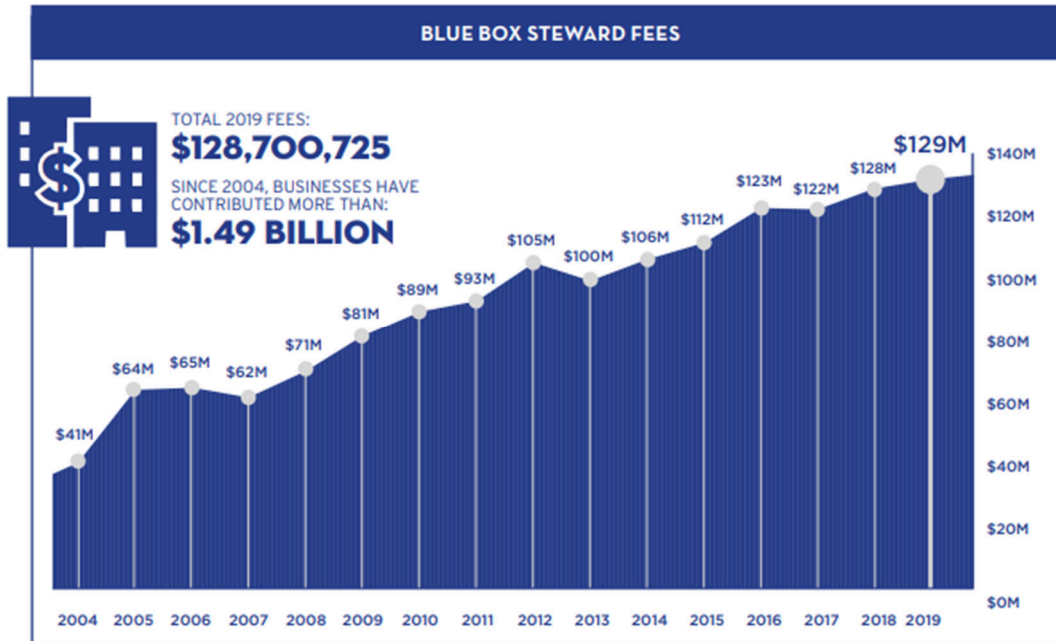
AHAM understands that the intent of this legislation is to manage packaging in the state. While this bill's result would likely reduce costs to municipalities, it would increase costs for its residents and create little to no changes in how municipalities deal with recycling and waste. In practice, where these programs have been adopted in other countries, the municipalities or other solid waste and recycling entities continue to charge the public the same amount for their services as they did prior to implementation of an EPR program and the public pays more for products. Therefore, there is no actual "shift" in financial responsibility to the producer. Instead, absent any offsetting reductions in their municipal solid waste and recycling fees, consumers are caught in the middle and wind up paying more. To make matters worse, the ever-increasing costs from EPR programs actually create a disincentive for achieving greater energy savings and other potential benefits. The cost increase from EPR could deter consumers from purchasing new appliances, which are more energy and water efficient, and more sustainable.

In addition, EPR attempts to insert a product manufacturer into the recycling stream, but the manufacturer has limited ability to influence consumer behavior regarding recycling or to change municipal waste policies that can drive greater recycling. In reality, EPR often results in hidden new costs to consumers that are by and large used to pay for the operation of a stewardship organization, substantial manufacturer compliance and reporting costs, and the government agency that is providing oversight.

In Canada, "EPR" packaging programs exist in various provinces, with manufacturers having to comply with each program that varies in scope. This is very costly to both manufacturers and to residents and has shown to be ineffective in improving recycling rates or achieving any of the recycling targets that are set. Ontario and British Columbia (B.C.) have two of the more recognized programs. In Ontario, program costs have increased on average 8% per year and have tripled since its inception (see below).¹ In B.C., the program costs are 28.5 percent higher since 2014 (average annual increase of 5.2 percent).²

¹ Stewardship Ontario. (2019). 2019 Annual Report. Stewardshpontario.ca

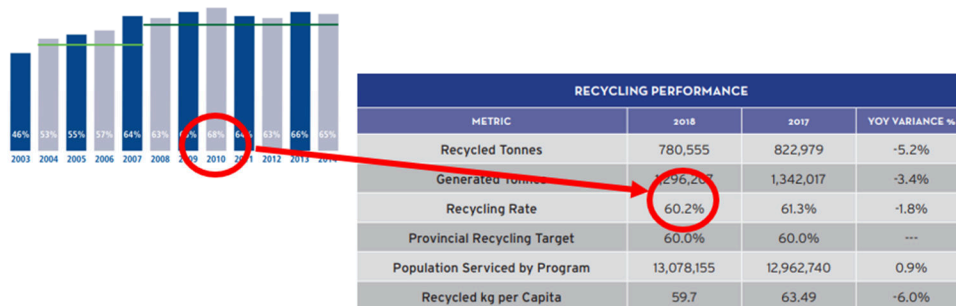
² Recycle BC. (2019) Annual Report 2019. Recyclebc.ca



-Stewardship Ontario 2020 Report

While the program costs skyrocket, the recovery rate is worse. In Ontario’s program materials recovery rate decreased from 68 percent to 60 percent (see below) and B.C’s has decreased by 2.4 percent. And to be clear, this is not even “recycling rate,” but “recovery rate,” which measures the reported amount of materials into the system compared to the amount collected.

Recovery Rate **decreased** from 68% in 2010 to 60.2% in 2018



Recycle BC and Stewardship Ontario are the only package recycling programs approved by each province’s Government, and as a result all obligated parties must adhere to their strict rules and regulations. This includes local processors and recyclers of materials, which if these programs choose not to do business with them, they will be out of business.³

³ Note, Stewardship Ontario is currently winding down its program to restart under a new Ontario Authority, which aims to shift program costs completely to obligated parties

Institutional, Commercial and Industrial (IC&I) Streams and Service Parts Not Exempted

Typically, when a new appliance is delivered and installed, the company delivering the appliance removes the packaging and takes it away for recycling. Through the business-to-business channel, materials are recycled and discarded accordingly, without placing a burden on municipal waste and recycling systems. The inclusion of Institutional, Commercial and Industrial (IC&I) would create significant unfairness and cross-subsidization between manufacturers. It also would create significant additional complexity and cannot be tracked by manufacturers on a unit level basis. For example, stretch wrap applied to a pallet of small appliances may be applied by a third party at a distribution center or after the manufacturing process, and service parts shipped to a service provider may sometimes be packaged individually and sometimes with multiple parts. The variability of packaging related to IC&I and service parts would add major complexity to manufacturer compliance requirements, ultimately raising costs for Colorado consumers. In addition, material collected in business-to-business transactions have less contamination, which makes recycling easier. Placing this material in the more contaminated “blue box” recycling stream is lowering the recyclability of this material.

Producers May Not Have Data on Where Products Are Ultimately Sold and Used

Producers of products that are sold through national and even US-Canada distribution chains do not have control or information pertaining to how products move through various distribution and retail networks. For example, an appliance manufacturer that ships products to a distribution center likely is unable to determine the location of final product sale and use. In such situations, a producer would only be able to report on products shipped to a distribution center, which could be regionally based inside or outside of Colorado. This also would be a major disincentive for maintaining and locating new distribution facilities in the state of Colorado and could lead to sales data that does not accurately reflect what is sold to Colorado consumers.

Conclusion

AHAM appreciates the opportunity to provide comments on HB 22-1355. Manufacturers of consumer products need flexibility in choosing appropriate materials for packaging their products to avoid situations that cause product breakage and damage during transport (which ultimately increases the lifecycle impact of the product) as well as to deter theft of smaller, high value electronics from retail establishments. An EPR program would increase costs for the industry thereby limiting the available resources for companies to invest in innovative and sustainable packaging solutions. The current system for appliances and appliance packaging works, and it should be allowed to continue on its successful path. Please AHAM’s Principles to Manage Packaging, which guide our advocacy as we address packaging in the waste stream and the recycling system design. For future reference, my contact information is (202) 202.872.5955 x327 or via electronic mail at jcassady@aham.org.

Policy Position

AHAM's 8 Key Principles to Manage Packaging

Background

The appliance industry recognizes the problems associated with pollution from packaging materials, and is making efforts to reduce the environmental impact of its product packaging.

Multiple stakeholders including state, local and federal governments must come together and identify responsible policy solutions that address this important environmental matter and recognize the role that manufacturers and businesses play in the delivery of consumer goods. The appliance industry provides the following 8 key principles to address packaging in the waste stream and the recycling system design.

Principles That Address Materials in the Waste Stream

1. Source Reduction Requirements Should be Realistic and Consider Whether Packaging Alternatives Are Adequate

Requirements to use alternatives to existing packaging materials or material source reduction involve tradeoffs. There are already inherent financial incentives for manufacturers to reduce costs and amounts of packaging because their intent is to sell the product, not its package. At the same time, packaging must be robust enough to protect the product adequately. For example, polystyrene is an important component in packaging. The material is very effective because it is light, resilient, and withstands all climates, even very high humidity. Replacing polystyrene with a material such as corrugated cardboard may result in safety concerns and increased product damage because cardboard is unable to maintain its structural integrity in high humidity. Cardboard also makes the packaging larger, which increases GHG emissions because more truckloads are needed to deliver the same number of products. Similarly, no alternative exists for protective plastic film, which protects stainless steel surfaces and electronic displays on appliances. Furthermore, vague language for source reduction mandates, such as “to the maximum extent feasible,” are impossible to demonstrate and create compliance uncertainty.

2. There Are Fundamental Differences Between Consumer-Facing Packaging and Non-Consumer Facing Packaging

Non-consumer facing packaging (often called transport or tertiary packaging) and household recycling streams that handle largely consumer facing or point-of-purchase packaging (common terms also include primary, sales, grouped, or secondary packaging), require separate policy frameworks. Large appliances generally operate within highly streamlined packaging waste management streams with high material recovery for tertiary packaging. Companies have an inherent financial incentive to cut costs and many have internal sustainability goals. Because tertiary packaging waste streams generally have less contamination across waste types, mixing tertiary waste streams with primary or secondary waste streams increases the system's complexity, makes compliance difficult, and creates more contaminated streams. Decreased recycling is the result. Furthermore, inclusion of tertiary packaging forces significant subsidization of residential programs, which is unfair for businesses that already manage and pay for tertiary packaging recycling independent of municipal recycling programs.

Principles That Address Recycling System Design

3. If EPR, then Real EPR

Extended Producer Responsibility (EPR) is a policy approach where the responsibility for the recycling and/or disposal of post-consumer products lies with producers, but if producers are responsible, then their involvement should not be limited to merely subsidizing inefficient recovery and recycling programs. The decisions behind producers selecting efficient and effective partners must be proportional to the financial contribution. If producers are responsible for all of the costs to dispose/recycle in a given jurisdiction, then producers must have the ability to exercise proper oversight without being required to give preferential treatment to existing partners, collectors, or municipal programs during the EPR program's design and implementation.

4. Recycling Infrastructure Is Inadequate

The United States lacks sufficient recycling capabilities to meet current needs. Any program that sets mandates on recycling must also address the shortfall in capabilities where the recycling would actually take place. Many types of packaging materials are recyclable today, and increased infrastructure will support increased recycling rates and markets for their re-use.

5. Responsibility for Recycling Requirements Must Be Based on Who Has Authority, And Targets Must Be Fair and Realistic

Responsibility for meeting recycling requirements belongs with those entities who have authority to achieve the requirements. Assigning responsibility without authority is dysfunctional. In addition, recycling targets must be realistic and based on step-level improvement in infrastructure capability, with adequate time given to regulated entities for meeting established targets. Fair and realistic targets also require clear definitions for terms such as "compostable," "recycling," "recycled," or "recyclable."

6. Post-Consumer Content Requirements Must be Realistic

Post-consumer content requirements must not degrade packaging quality, performance, and safety, or lead to burdensome cost increases. Increasing the amount of post-consumer content in packaging materials requires an adequate market to incentivize use of these materials. The current market does not support adequate supply or quality of many recycled packaging materials.

7. Harmonize Recycling Policies so People Clearly Understand What to Recycle and How

Consumer confusion is rampant on how and what to recycle because existing recycling programs vary across jurisdictions. An effective recycling program relies on volume, which means municipalities must harmonize recycling policies and increase consumer involvement. Standards useful to this harmonization process are under development, containing methodologies to assess both recycling facilities and recyclable materials.

8. Implement Pay-As-You-Throw and Enforce Consumer Recycling Requirements

Data from jurisdictions in San Francisco and Europe show that consumer financial incentives are necessary to achieve ambitious recycling targets. Pay-As-You-Throw or mandatory recycling policies must be part of a comprehensive plan.

AHAM Position

AHAM recognizes the importance of finding solutions on this important environmental issue. The appliance industry will consider supporting legislative and regulatory packages that are consistent with the above stated principles.

December 5, 2019