Maryland Chapter
P.O. Box 278
Riverdale, MD 20738

Committee: Environment and Transportation
Testimony on: HB 168 Environment – Plastic Products – Postconsumer Recycled Content Program
Position: Support
Hearing Date: February 7**,** 2024

The Maryland Chapter of the Sierra Club strongly supports HB 168. It would prohibit producers of plastic beverage containers, rigid plastic food containers, and rigid plastic household cleaning and personal care products from selling, offering for sale, or distributing the products in Maryland unless the products are produced using a certain minimum percentage of post-consumer[1] recycled (PCR) content. The timeline for adoption and the target percentage of PCR content differ across products.

Recycled content mandates like HB 168 require a minimum percentage of recycled content in new plastic containers, creating a steady demand for recycled plastic that replaces cheaper virgin plastic and prevents the negative environmental impacts of production of virgin plastic. According to the U.S. Environmental Protection Agency (EPA) about 40% of plastic in the municipal solid waste stream is plastic packaging, and almost all of it is made from virgin plastic.[2] Mandating recycled content for new containers conserves resources, diverting waste from landfills and incinerators. It reduces the demand for virgin materials and the greenhouse gas emissions and energy associated with their extraction and manufacture. It provides stability and viability in the marketplace for recyclers, as well as incentives to improve the overall quality of PCR materials and redesign products to be more recyclable.**[3]** Recycled content mandates are a major policy tool for developing recycling markets in Maryland, and the objective of HB 164 "Recycling Market Development," enacted in 2021.[4]

Concerns about plastic pollution have led multinational corporations to set voluntary recycled content targets for 2025 as high as 50% for plastic packaging, but progress has been slow and there are no financial consequences for missing the targets (Exhibit1)**.[5]** HB 168 would make all producers selling or distributing the covered containers in Maryland accountable for reaching recycled content targets and create a level, competitive playing field across producers. Producers would also be responsible for financing the program's oversight by the Maryland Department of the Environment (MDE). They would have to register annually with MDE and pay a registration fee; registration fees and penalties would be placed in a special account in the State Recycling Trust Fund that can only be used by MDE to cover the costs of planning, implementing, administering, monitoring, enforcing, and evaluating the program. The registration fee is calculated annually to cover the estimated costs for the following year and assessed on each producer in proportion to its share of the total amount of plastic sold in the state in each product category. MDE's start-up costs financed from the General Fund would be reimbursed.

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[1] "Post-consumer" material is generated after a product is made, sold, used, collected, and sorted. "Pre-consumer" or "post-industrial" materials are generated as a byproduct of a manufacturing process.
[2] U.S.EPA. 2020. *Advancing Sustainable Materials Management: 2018 Facts and Figures Report*.
[3] Balkan, Elizabeth. 2021. *Policy Guidelines for Recycled Content Mandates*. Reloop. September; Resource Recycling Systems (RRS). 2022. *Recommendations for Recycled Content: Requirements for Plastic Goods and Packaging.* Commissioned by the Ocean Conservancy.
[4] https://mgaleg.maryland.gov/2021RS/chapters_noln/Ch_289_hb0164T.pdf
[5] Ellen MacArthur Foundation. Global Commitment Signatory Reports, 2023.

The success of the program in increasing recycled content in new products will depend on both demand- and supply-side policies.

- On the demand side for recycled content, it is important to have appropriate targets – "aggressive, but not technically infeasible."[6] HB 168's recycled content targets increase gradually over a decade to match increased supply, from 15% to 50% recycled content for plastic beverage containers and from 15% to 40% recycled content for rigid plastic food containers by 2033. The ramp to 35% recycled content for rigid plastic household cleaners and personal care products is longer, 2035. These targets and timelines are consistent with those in enacted legislation in the European Union and five U.S. states – California, Connecticut, Maine, New Jersey, and Washington (Exhibit 2)**.** Achievements will be confirmed via third-party independent certification.
- On the supply side, availability of recycled content can be achieved by policies that incentivize redesign of products to be more recyclable, including via packaging producer responsibility laws, and adoption of beverage container deposit-return systems ("bottle bills"). The latter, which achieve a high collection and recycling rate, provide a large volume of clean, uncontaminated, food-grade recycled plastic content that can be used in the manufacture of new beverage containers, in support of a circular economy.[7]

HB 168 has benefitted from consultations with government agencies in states that have already adopted mandatory recycled content laws and testimony on the 2023 bill.[8] In response to concern about the impact of anomalous market conditions or lack of supply of recycled content beyond producers' control in meeting program targets, the bill allows a reduction in administrative penalties if a producer submits a corrective action plan approved by MDE.[9] The threshold for applicability of the law to a producer has been raised from annual sales of a minimum of 1,000 units of a covered product to minimum sales of 1 ton of covered product, to improve consistency with legislation in other states. New definitions have been added for covered products and greater clarity is provided on third-party certification.

In 2012, Maryland enacted a statewide goal of diverting 60% of all waste by 2020.[10] However, only 42.25% of municipal solid waste was diverted in 2020.[11] Meeting the 2020 goal or a more ambitious one will require producers to create post-consumer materials of high quality and incentives to increase post-consumer content in new products. HB 168 is a key policy for achieving that objective for plastic packaging. It will stimulate recycling markets, reduce plastic waste and greenhouse gas emissions, and provide an incentive for product redesign for recyclability. We respectfully request a favorable report.

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Attachments:
Exhibit 1: Global corporate plastic packaging PCR content 2025 commitments and 2022 actual levels
Exhibit 2: Timeline for plastic PCR content in five US states, the EU, and HB 168

[6] Balkan, *Op.Cit.* RRS,*Op.Cit.*
[7] *Ibid.*
[8] New Jersey Department of Environmental Protection and Washington State Department of Ecology.
[9] This is the approach adopted in California and Washington state, an alternative to waivers.
[10] House Bill 929, "Environment – Recycling Rate and Waste Diversion – Statewide Goals,"sponsored by Dels. Stein, Frush, and Niemann.
[11] Comprised of a 38.22% recycling rate and a 4.03% source reduction credit. MDE Land and Materials Administration. 2021. *Maryland Solid Waste Management and Diversion Report 2021* (CY 2020 data).

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Exhibit 1. Global Corporate Plastic Packaging Postconsumer Recycled Content Commitments for 2025 and Achievements as of 2022

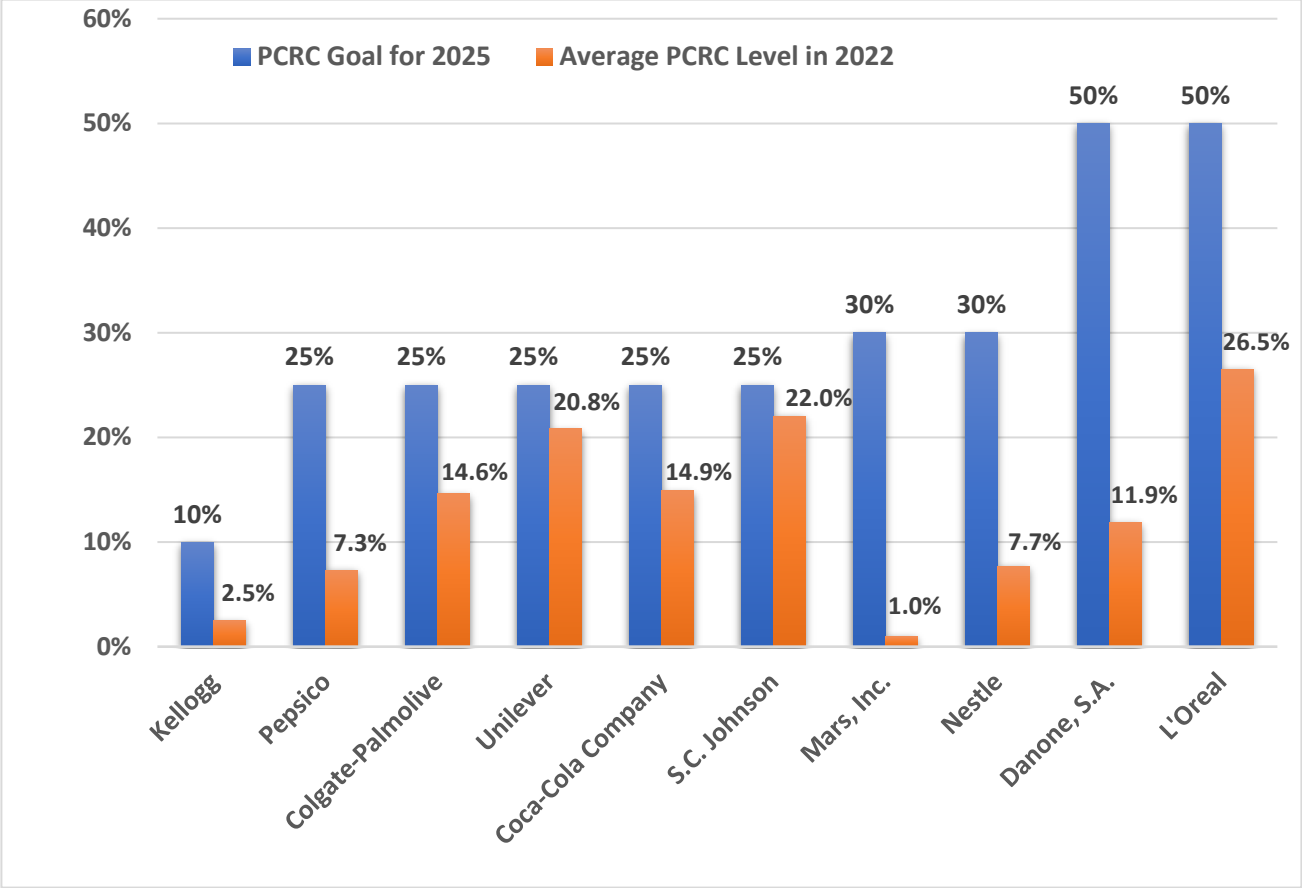

Exhibit 2.Timeline for plastic PCR content in five US states, the European Union, and Maryland's HB 168

Plastic product	Jurisdiction						
	California[a] AB793 Enacted 9/24/2020 Effective 1/1/2022	**Connecticut** HB6664 Passed 6/7/2023 Effective **6/9/2023**	**Maine** LD1467 Passed 5/7/2022 Effective 8/8/2022	**New Jersey**, S2515 Enacted 1/18/2022 Effective 1/18/2022	**Washington state** SB5022 Enacted 5/17/2021 Effective 1/2/2023	**European Union**[b] Adopted 6/2019	Maryland HB168 Proposed
Plastic beverage containers	2022: 15% 2025: 25% 2030: 50%	2027: 25% 2032: 30%	2026: 25% 2031: 30%	2024: 15% 2027: 20% (5% increase every 3 years) 2045: 50%	2023: 15% 2026: 25% 2031: 50%	2025: 25% 2030: 30%	2026: 15% 2029: 25% 2033: 50%
Rigid plastic food containers				"Rigid plastic containers"[c] 2024: 10% 2027: 20% 2030: 30% 2033: 40% 2036: 50%			2027: 15% 2030: 30% 2033: 40%
Rigid plastic HH cleaning products & personal care products					2025: 15% 2028: 25% 2031: 50%		2027: 25% 2031: 30% 2035: 35%

Note: (1) This table presents PCR content targets for plastic containers the US states that match the container types proposed in HB 168. Some of the bills cover additional plastic products not in the Maryland bill or recycled content for products made of other materials. (2) RRS, *Op.Cit* .presents a 2019/2020 baseline level of recycled content in the U.S. and Canada as 11% for PET bottles and 17% for HDPE bottles. (PET=polyethylene terephthalate (#1 resin); HDPE=high density polyethylene (#2 resin)). These numbers apply to all bottles of those resins, including beverage bottles and bottles of other products.

a. California has passed bills for PCR content on other plastic products in the past. The plastic beverage container targets are in their most recent bill, which covered all plastic beverage containers in the California Redemption Value program (their beverage container deposit law)
b. For PET beverage bottles only.
c. The New Jersey bill has target PCR percentages for all rigid plastic containers, not according to what they contain.