



Maryland Chapter  
P.O. Box 278  
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**Committee:** Finance

**Testimony on:** SB 292 “Environment – Packaging Materials -- Producer Responsibility”

**Position:** Support with Amendments

**Hearing Date:** February 17, 2022

The Sierra Club embraces the principle of producer responsibility, in which the designer or producer of a product takes responsibility for minimizing the product’s environmental and social impacts across all stages of the product’s life cycle. Producer responsibility needs to focus upstream, on waste reduction, redesign, reuse, and use of recycled content products. Producers should be fiscally responsible, but not necessarily physically responsible, for implementing the program, subject to public oversight and accountability.<sup>1</sup> SB 292 creates a producer responsibility program for packaging in which producers are *both* financially and physically responsible for implementation, underscoring the need for strong public oversight to ensure that targets are met and funds generated are used appropriately. The Maryland Chapter of the Sierra Club supports SB 292 with amendments to strengthen accountability and oversight that we explain below.

#### **What the bill would do**

The intent of SB 292 is to provide a framework for modernizing and improving Maryland’s waste and recycling systems and to require producers to reimburse local governments for costs associated with transporting, collecting, and processing packaging materials. SB 292 aims to improve reuse, composting, recycling, and recycling markets; reduce waste; and increase recycling rates. Packaging producers, individually or as part of a Producer Responsibility Organization (PRO), would submit a Producer Responsibility Plan to the Maryland Department of the Environment (MDE). The Plan must identify the producers and the brands of packaging covered; propose performance goals for each material type; describe the financing to implement the Plan; and indicate how the goals will be met, including reimbursement of local governments for collecting, transporting, and processing packaging materials. After approval, the Plan is implemented by the producers or PRO.

Oversight of the program would be provided by MDE, which is charged with reviewing and approving the Producer Responsibility Plan and annual reports. MDE would also be responsible for conducting a statewide recycling needs assessment every 10 years. The bill creates a Producer Responsibility Plan Advisory Council, responsible for advising the PRO at its request on the drafting or amending of a Plan; reviewing the Plan and annual reports submitted by the PRO; making recommendations to MDE regarding Plan approval; and making recommendations to MDE and the PRO on implementation of the Plan. The producers participating in Maryland’s program would include multinational corporations that are already participating in packaging programs elsewhere in the world.<sup>2</sup>

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<sup>1</sup>[Sierra Club Zero Waste Policy](#) (2019).

<sup>2</sup> Small producers of containers and packaging would be exempt from SB 292.

### **Packaging is a large and diverse group of products**

Containers and packaging are a substantial share of municipal solid waste generated in the United States - 28.1% in 2018.<sup>3</sup> Over all container and packaging materials, 53.9% by weight was recycled. However, recycling rates vary, from a high of 81% for paper and cardboard packaging to a low of 14% for plastic. Multi-layer plastic packaging, multi-resin pouches, and aseptic cartons for beverages and soups are not currently designed to be recyclable. Plastic film is generally not accepted for single stream recycling; it fouls equipment, becomes contaminated, and lacks a market. Plastic packaging also escapes into the environment as litter. Seven of the top ten plastic items collected in beach cleanups in the US are plastic packaging or containers.<sup>4</sup> Producer responsibility programs have the potential to create incentives to reduce packaging and redesign it to be reusable or recyclable. However, they are not a magic bullet, just one of several tools in the toolbox to reduce waste.

There is no experience with producer responsibility programs for packaging in the U.S. There are over 118 programs for producer responsibility in 33 states for a range of individual products, most of them difficult to recycle. However, only two states (Maine and Oregon) have enacted producer responsibility programs for packaging, and in neither state is the program operational.<sup>5</sup> Maryland won't have the opportunity to learn lessons from these programs. Producer responsibility programs for packaging are complex; the details of the legislation are important.

### **Improvements in the bill since 2021**

This bill has improved substantially since last year, with the addition of the Advisory Council and a Recycling Needs Assessment every 10 years, more reporting indicators in the annual plans, and a requirement for "eco-modulated" fees on packaging products according to their recyclability and other environmental features. Paper, which is easy to recycle, has been appropriately removed from the bill. We also appreciate that the Producer Responsibility Plan can be updated on a regular basis or if MDE requires it.

The Sierra Club continues to oppose inclusion of beverage containers in the bill because a separate beverage container deposit program with a 10-cent deposit would be able to recover 90% of the containers, a level of recycling that is unmatched by any conventional recycling program, while producing source-separated, high quality feedstock to meet postconsumer content requirements legislated across the country, and greatly reducing litter.

### **Recommended amendments to strengthen oversight and accountability for results**

We respectfully request consideration of the following amendments to provide greater transparency, accountability, and public oversight of a program largely managed by producers and PROs. The proposed language is appended to this testimony.

#1: Additional performance targets articulated in the bill and meaningful financial incentives for achieving them. Last year's bill had three performance targets articulated in the legislation, but this year there is only one: a reduction in packaging of each material type by at least 25% during the first 5-year Plan. There is no penalty for missing the target, just a requirement to update the Plan. *All the other*

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<sup>3</sup>U.S. Environmental Protection Agency. The other waste categories are durable goods (19.5%), non-durable goods (17.3%), and other wastes (including yard waste, food, organics, and miscellaneous non-organics, 35.1%). [https://www.epa.gov/sites/default/files/2021-01/documents/2018\\_ff\\_fact\\_sheet\\_dec\\_2020\\_fnl\\_508.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/2018_ff_fact_sheet_dec_2020_fnl_508.pdf), p. 9.

<sup>4</sup> Food wrappers, bottle caps, plastic beverage bottles, plastic bags, lids, takeout containers (plastic and foam). 5Gyres *et al.* 2017. *Better Alternatives Now: BAN 2.0*.

<sup>5</sup> Producer responsibility programs are common in Canada, the European Union, Russia, and Brazil (to name a few). Northeast Recycling Council (NERC) and Northeast Waste Management Officials' Association (NEWMOA). 2020. "White Paper: Extended Producer Responsibility (EPR) for Packaging and Paper Products." April.

*performance targets are proposed by the PRO after the bill is passed. We propose two additional targets to be written into the bill, and penalties for not meeting the targets:*

- A penalty of 20¢ per pound of material short of the 25% packaging reduction target in the bill
- A 90% beverage container recycling rate by the end of the first 5-year Plan. The penalty for missing the target is 10¢ per container short of the 90% target.<sup>6</sup>
- A minimum 25% postconsumer plastic recycled content in plastic beverage containers by 2030. The penalty for missing the target is 20¢ for each pound of postconsumer resin short of the target amount.<sup>7</sup>

#2: Verification of achievement of performance goals by an independent entity reporting to MDE, the cost of which is reimbursed by the PRO to MDE through the State Recycling Trust Fund.

#3: Processing of materials by chemical recycling shall not count against any recycling targets

#4: Removal of representatives of the PRO from the Advisory Council, to remove a conflict of interest.<sup>8</sup>

In summary, the Sierra Club supports producer responsibility for packaging with strong public oversight and safeguards to ensure the achievement of targets. SB 292 sets up an ambitious program to reduce waste and recycle more. With the above amendments, we respectfully request a favorable report on SB 292.

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<sup>6</sup>Maryland already has a baseline recycling rate for beverage containers (22%) calculated by the Container Recycling Institute for 2018. It is not necessary to await the Needs Assessment to establish the baseline. If beverage containers are not removed from the bill, the PRO should have to show it can achieve a recycling rate at least as high as the best alternative program. The beverage companies are advertising that they can get “every bottle back.”

<sup>7</sup> The 25% post-consumer content requirement in plastic beverage containers by 2030 should not be a burden; recently passed legislation in California (AB 793) requires meeting the 25% target by 2025 and 50% by 2030. The penalty of 20¢ per pound of resin is the rate assessed for that bill.

<sup>8</sup> The purpose of the Advisory Council is to review and comment on the PRO’s Plan and annual reports; members of the PRO should not be assessing their own Plan.

## Proposed Amendments

**I. Two additional targets to appear in the bill and penalties for failure to meet each of the three targets.** Insert on p. 13, after line 19:

(4) (II) MANUFACTURERS THAT DO NOT ACHIEVE THIS TARGET WILL BE ASSESSED A PENALTY OF 20 CENTS PER POUND FOR EACH POUND OF MATERIAL SHORT OF THE TARGET AMOUNT.

(5) (I) REQUIRE MANUFACTURERS OF BEVERAGE CONTAINERS TO ACHIEVE A RECYCLING RATE OF 90% WITHIN 5 YEARS AFTER THE DATE ON WHICH THE FIRST VERSION OF THE PLAN IS APPROVED.

(II) MANUFACTURERS THAT DO NOT MEET THE MINIMUM BEVERAGE CONTAINER RECYCLING TARGET WILL BE ASSESSED AN ANNUAL PENALTY OF 10 CENTS PER BEVERAGE CONTAINER SHORT OF THE 90% TARGET.

(6) (1) REQUIRE MANUFACTURERS OF PLASTIC BEVERAGE CONTAINERS TO ATTAIN A MINIMUM 25% POSTCONSUMER PLASTIC RECYCLED CONTENT BY 2030.<sup>9</sup>

(II) MANUFACTURERS THAT DO NOT ACHIEVE THIS TARGET WILL BE ASSESSED A PENALTY OF 20 CENTS FOR EACH POUND OF POSTCONSUMER RESIN SHORT OF THE TARGET AMOUNT.<sup>10</sup>

p. 15, line 20: "...ESTABLISH ADDITIONAL PERFORMANCE GOALS FOR EACH PACKAGING MATERIAL TYPE USING A BASELINE YEAR..."

**II. Remove representatives of the PRO from membership on the Advisory Council; their inclusion is a conflict of interest.** P. 20, lines 16-17:

~~(H) A REPRESENTATIVE FROM EACH PRODUCER RESPONSIBILITY ORGANIZATION;~~

**III. Independent verification of achievement of performance goals, and chemical recycling cannot be used to meet recycling objectives.** p.24, insert between lines 10 & 11:

(C) ACHIEVEMENT OF PERFORMANCE TARGETS SHALL BE VERIFIED BY AN INDEPENDENT ENTITY REPORTING TO THE DEPARTMENT. THE COSTS OF VERIFICATION SHALL BE REIMBURSED TO THE DEPARTMENT FROM THE PRODUCER RESPONSIBILITY ORGANIZATION.

(D) PROCESSING OF MATERIALS BY CHEMICAL RECYCLING SHALL NOT COUNT AGAINST ANY RECYCLING TARGETS.

[Re-number line 11 (E) and line 15 (F)]

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<sup>9</sup> The 25% post-consumer content requirement in plastic beverage containers by 2030 should not be a burden; recently passed legislation in California (AB 793) requires meeting the 25% target by 2025 and 50% by 2030.

<sup>10</sup> This is the penalty set in the California statute for falling short of the postconsumer content targets