



October 2023

**Written Testimony on Packaging Production
on behalf of the American Forest & Paper Association
Assembly and Senate Standing Committee on Environmental Conservation**

October 24, 2023

The American Forest & Paper Association¹ (AF&PA) appreciates the opportunity to share our perspective on extended producer responsibility (EPR) legislation impacting paper-based packaging on behalf of our members and their employees who are an integral part of the circular economy and New York's workforce. In New York, the industry employs more than 26,000 people at 198 facilities across the state with an annual payroll of more than \$1.7 billion and generates \$150 million annually in state and local taxes.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. EPR programs can be an effective policy tool for products that are difficult to process, have low recycling rates, or where healthy end markets do not exist; *but none of these issues apply to paper.*

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. We urge the legislature to address this complex concept in a process that will allow time and due consideration of this issue which will touch nearly every part of the state economy. Our comments below include information on the industry's perspective relative to EPR, and dives further into specific sections of the different bills that give us concern such as: the unintended consequences of EPR; the need for a robust needs assessment first; and additional concerns beginning on page 4.

Paper Recycling Works

Paper recycling rates in the U.S. have consistently increased in recent decades, with 68 percent of paper recovered for recycling in 2022.³ 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

¹ 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 five percent of the total U.S. manufacturing GDP, manufactures about \$350 billion in products annually and employs about 925,000 people. The industry meets a payroll of approximately \$65 billion annually and is among the top 10 manufacturing sector employers in 43 states.

² Data sources: U.S. government, AF&PA, and Fastmarkets RISI. Figures are the most recent available as of December 2022.

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

infrastructure investments by the end of 2024 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 (including one in NY) 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 90.5 percent.⁶ In addition, 88.9 percent of New Yorkers have access to residential curbside recycling.⁷ The state already has a well-developed and widely accessible paper and paperboard recycling system, thus negating the need for an EPR program. Identifying successful parts of existing programs will allow the state to replicate proven solutions with lowered risk for all stakeholders.

Continuing innovation and meeting customer needs is an important part of the way our members do business. Through research among our members and best practices in the industry, AF&PA developed a tool to help packaging manufacturers, designers and brands create and manufacture packaging that meets their recyclability goals. *The Design Guidance for Recyclability* is intended to serve as a data-driven resource to support ongoing innovation.⁸

State Needs Assessment

AF&PA supports a robust state or regional needs assessment for New York. The Center for Sustainable Materials Management is partnering with Resource Recycling Systems on a statewide "needs assessment and gap analysis" of New York's recycling system, paid for in part by the NYS Environmental Protection Fund. Because this project is being paid for by the state, it would be inappropriate and wasteful to pass an EPR bill to change the existing systems before the assessment is complete.

We believe there must be a baseline to establish pre-existing collection methods and identify current processing infrastructure, waste management practices, and costs. Identifying successful parts of existing programs will allow the state to replicate proven solutions with lowered risk for all stakeholders.

The findings of a needs assessment could determine that certain producers don't need to pay, or that other systems need more support than previously thought, and flexibility should be built in to respond to that by not passing EPR legislation before the needs assessment is complete. We also believe that the assessment should also look at regional needs as the state's waste management is not restricted to within state borders.

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 <https://www.afandpa.org/news/2021/afpa-releases-new-guide-further-advance-paper-recycling-0>

Unintended Consequences of EPR Policies

EPR policies must be carefully designed to avoid creating fees or mandates that could disrupt efficient and successful paper recycling streams or that direct private sector funds away from investment in recycling infrastructure. These bills require funding which would be used to pay the costs of municipalities and entities providing solid waste management services. But this is merely a cost-shifting mechanism common in other EPR programs that does not create added value or develop end markets for recyclable materials. The paper industry already contributes to economically sustainable recycling programs by purchasing and utilizing material sourced from residential collection programs in manufacturing new products.

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.

Recovered Fiber Goals and Mandates

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. The preference for recycled content in packaging could be contrary to sustainability goals. Rather than drive increased paper recycling, fee structures to incentivize recycled content 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.⁹ It can also result in unintended consequences such as an increase in transportation costs and emissions due to shipping recovered fiber even while virgin fiber can be sourced more locally.

Recycled paper fiber can be reused 5-7 times to make new products. Virgin pulp supply is needed to sustain and grow the recovered fiber cycle. The paper and wood products industry promotes and uses sustainable forestry best practices because it depends on sustainable forest growth. These best practices include forest certification programs that provide standards, or guidelines and structure, for sustainable forest management and fiber sourcing. In North America there is a mosaic of healthy forests, wherein growing, harvesting, replanting, and regrowing forests occurs as a standard practice. Forest lands in North America have been stable for more than 100 years. Our industry responsibly uses every part of the tree to make essential products for everyday life. Using paper and wood products incentivizes regeneration and replanting trees after harvest and keeping land in forests, decreasing the likelihood of conversion to other uses like parking lots, subdivisions, or pastures.

Current 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.

⁹ https://www.afandpa.org/sites/default/files/2022-09/AF%26PA-RecycledContentMandates_8152022_0.pdf

Additional Concerns

- Reusable Packaging is an Imperfect Option

Parts of the bill explicitly point to making shifts toward reusable packaging which is often, by nature, neither recyclable nor compostable. A sudden shift to reusable packaging mandated by policy before its end-of-life disposition is worked out could result in that packaging being treated as single-use when it may be ultimately less sustainable from a life-cycle perspective than packaging options available today. An example of this can be found in New Jersey, where the ban on all single-use bags has meant that e-commerce and curbside pickup groceries are distributed to customers in new, reusable bags at each purchase, leading to a glut of those same reusable bags in constituent homes. Unlike paper bags, however, the reusable bags are not recyclable so many of the excess bags are likely headed to the landfill. The recently passed Illinois Senate Bill 1555 state needs assessment bill includes language to specifically understand the recyclability of reusable packaging as well.

- Toxicity Language Does Not Belong in EPR Programs

Requirements related to the toxicity of products are addressed in separate statute and should not be included in already complex and burdensome legislation. Requiring the stewardship organization to also be responsible for making determinations on chemical considerations is inappropriate. Chemical knowledge is not included as a factor in their competitive bidding, has no overlap with other knowledge required to execute the legislation, and interferes with the stakeholder engagement underway between producers and policymakers on chemical regulations in the state.

- Product Labeling Requirements

The EPR bills set labeling requirements or reference labeling opportunities for packaging, creating more labeling complexity and increasing confusion for consumers, rather than achieving any increase in recycling. Producers could be required to indicate the percentage of post-consumer recycled material, whether it is readily-recyclable and how, or whether it is compostable.

Uniform labeling standards are essential to the free flow of interstate and international commerce. Most companies do not distribute products and the associated packaging solely to New York. It will be very difficult, if not impossible, for manufacturers to comply with the labeling standards as currently drafted given the language would create conflicting labeling requirements across state jurisdictions. This would require creating a new regulatory framework that is partially duplicative of the Federal Trade Commission's Green Guides and a cumbersome new bureaucracy for the agency to update every two years based on current "readily recyclable status" for certain products to develop and maintain a list of "approved" list of recyclables.

Conclusion

Legislative policy should take a more solution-oriented approach focused on problematic materials in the commingled residential collection stream and using information from the recently announced needs assessment and gap analysis that is being funded by the state. 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.

New York State Joint Environmental Conservation Committee

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We encourage policymakers of New York to avoid measures that might penalize the forest products industry from continuing to engage in the state economy and we look forward to continuing our work with the State of New York. Please contact Abigail Sztejn, Senior Director, Government Affairs at Abigail_Sztejn@afandpa.org with any questions.