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October 25, 2023

NY State Standing Committee on Environmental Conservation
NY Assembly Standing Committee on Environmental Conservation

Honorable Committee Chairs, Senators & Assembly Members:

Thank you for the opportunity to provide testimony on Packaging Reduction and the Bottle Bill.

My name is Thomas Outerbridge and I am President of Sims Municipal Recycling (SMR). SMR has a long-term contract with the NYC Department of Sanitation (DSNY) to process and market all of the metal, glass and plastic (MGP) and about half of the paper collected by DSNY through the NYC curbside recycling program. SMR also has a contract with Rockland County to operate the recycling facility that services the County's residents and businesses.

For several years we have been supporting the effort to enact sensible and practical Extended Producer Responsibility (EPR) legislation for packaging materials in New York State. We have engaged in this process with a broad range of organizations from across the state, including those representing the public entities that are responsible for managing and paying for public recycling programs. This includes the NYS Recycling Association (NYSAR3), the NY State Association of Counties (NYSAC), the Federation of NYS Solid Waste Associations, the NY State Conference of Mayors (NYCOM), and the NYC Department of Sanitation, as well as many advocacy organizations, such as the NY Product Stewardship Council, the Natural Resources Defense Council, the NY League of Conservation Voters, and Citizens Campaign for the Environment.

The principal aim of EPR is twofold. One, to provide financial support to local governments that must pay for recycling programs, and to insulate these local programs from commodity market fluctuations. Two, to incentive producers to minimize packaging and to utilize packaging materials that are recyclable. These twin aims are achieved through a system whereby producers who sell packaging that ends up in the municipal waste stream pay a fee that covers or helps to offset the costs of municipalities to recycle that material. The fee associated with the package is tied to the value and/or cost of managing that material.

Clearly the detailed mechanisms, incentives, and reimbursement procedures can be complicated, but it is worth noting that Europe and Canada long ago established packaging EPR laws, and in the US, ME, CO, OR, and CA have all passed EPR laws. It is also worth noting that these laws are not static, but are adjusted over time in response to changes in the material stream, markets, technologies and producer/consumer behavior. Hence, equally important to passing EPR legislation that is practical, understandable and enforceable, is building into any legislation procedures and mechanisms to make adjustments over time. Over the past several years, I have provided comments and testimony on several different EPR bills, from the Senate, the Assembly and the Governor. Below are some specific observations on last year's bill A.5322/S.4246.

1. The bill states producers shall have recyclable packaging within 2 years. As recyclers, we would welcome this. But in reality, that means every pouch or flexible package (what is referred to as "Film and Flexibles" in the packaging and recycling industry) would be prohibited. Currently, there are some store take-back programs for plastic bags, but no curbside recycling program is equipped to handle film and flexibles, MRFs are not equipped to sort it, and there are no/limited markets for MRF film and flexibles. Film and flexibles

encompass the pouch inside of a cereal box, the plastic wrap over bundles of toilet paper, bags of rice, sugar, pasta, every potato chip bag, juice pouches, every pet food bag, toothpaste tubes, practically every candy bar wrapper, bag of nuts, bag of coffee, etc. All of these packages will be prohibited. In addition, depending on the outcome of the needs assessment, glass and cartons (poly-coated and aseptic cartons) may not qualify as recyclable and would be prohibited. We support strong incentives to drive recyclability, but would caution against prohibitions against widely utilized materials without a clear understanding of the alternatives.

2. Reduction targets are to be measured against the amount of packaging a producer makes at the start of the program. This effectively makes it impossible for a company to grow. Alternatively, a company could meet its target by selling a division that makes a product. In addition, reduction targets are for primary **plastic** packaging. It does not make sense to exclude other materials, such as glass, cartons, etc. used in primary packaging. HDPE, PP and PET plastics are common primary package types that are highly recyclable and key revenue streams for municipal recycling programs. If producers switch to glass or cartons, we will see an increase in the amount of waste produced due to their higher weight, and we will have a less recyclable and less valuable recyclables stream. We support reduction targets, but they need to be structured to be achievable and to drive the desired results.
3. We support the elimination of toxic components from packaging, but note that toxics are typically addressed in their own rules and regulations (e.g., PFAS, fire retardant chemicals, etc.) due to their specific complexities and different regulatory authorities, such as FDA and departments of health. If toxics reduction can be incorporated into a packaging EPR law, we wholeheartedly support that, but would not want to see EPR fail to pass if it does not address all toxics concerns.
4. Individual producers must meet certain recycling rates. However, in most cases, producers will not know how many of their packages are recycled. MRFs do not produce brand specific information. Information is available on a commodity or material specific level, but not by brand.
5. The bill states there will be no charge for Reusable packaging, but there isn't a clear standard for reuse, such as number of times a package is reused to be deemed Reusable. We know that reusable packaging ultimately ends up in the waste stream (either in garbage or recyclables), so there should be a standard for recyclability of reusable packaging.
6. The bill refers to a need for a "regional" market for recyclables, but it is not clear what constitutes regional.

Regarding expansions to the Bottle Bill (BB), it is critical to understand the relationship between the BB and the value of materials present in the curbside recycling program (and hence the cost of curbside recycling). We, along with many other private recyclers and public sector officials responsible for local recycling programs, have supported expansion of the BB to include wine and spirits. This is because wine and spirit containers are almost exclusively glass, and glass has a negative value in the curbside recycling mix and can even negatively impact the value of other materials collected curbside, such as paper. Extending the BB to wine and liquor should increase the value of the curbside recyclables mix, thereby reducing municipal recycling costs. In addition, glass that is redeemed through the BB system is more likely to end up in a higher end use than glass produced at Material Recovery Facilities (MRFs), particularly in the case of glass from smaller MRFs that cannot justify the costs to "clean up" their curbside glass.

On the other hand, we oppose the expansion of the BB to additional plastic and aluminum containers. There have been previous proposals to expand the BB to include non-alcoholic beverages (NAB). The majority of NAB containers are PET (#1 plastic) and Aluminum. PET and Aluminum commodities represent

critical revenue streams for all curbside programs, including in NYC. All MRFs are equipped to separate these materials and they are commodities that MRFs rely on for revenue. We possess very detailed data on the make-up of the NYC curbside recyclables stream. For NYC, a NAB deposit will target 60% of all PET bottles in the current MGP stream, and approximately 25% of the remaining Aluminum cans in the MGP stream. A NAB deposit will also target, for the first time, certain HDPE (#2 plastic) containers (the most valuable plastic in the curbside mix). It is not possible to redirect this material into the deposit system and remove this revenue stream from the curbside program without impacting the financial viability of the program. Similar proportional impacts can be expected for municipal recycling programs across the state.

Thank you again for the opportunity to submit this testimony. We are always ready to share our experience to assist our legislators in advancing programs to reduce waste and enhance recycling for the benefits of New Yorkers and the environment.

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