

February 13, 2023

Dear Senate and Assembly Members and staff,

We would like to sincerely thank you for your leadership to improve New York's recycling system and the opportunity to provide comments on **Part PP: "waste reduction and recycling infrastructure act"** within the Fiscal Year (FY) 2023-24 Executive Budget Proposal. We ask you to include our written comments as part of the committees' records.

On behalf of the [Association of Plastics Recyclers](https://www.plasticsrecycling.org), I am submitting comments in strong support of Part PP. APR is a US-based, international trade association representing hundreds of US companies working everyday to recycle your plastic bottles, milk jugs, yogurt tubs, and more into new products and packaging. Our members have the capacity to recycle nearly twice as much plastic as we do now. **Our greatest challenge is that we are not collecting enough bottles, milk jugs, and other common plastics for recycling from households and businesses.** This is why we are supporting and actively engaging in Extended Producer Responsibility (EPR) policies in several states, and have been part of the ongoing initiatives in New York in previous years.

Today and every day of the year, in five provinces in Canada and over 20 European countries, more than 3,000 companies participate in producer responsibility programs. Most of those companies are the same companies that sell the same products on our shelves in the US. Companies such as Coca Cola and Pepsi, Keurig and Kelloggs, Clorox and Colgate, and many, many others. **We know EPR policies work, and we know they are one of the most effective solutions to increase the amount of plastics collected for recycling and ensure more recycled materials are used in new plastic packaging.**

In addition, **APR strongly supports the need for more post-consumer recycled content in plastic packaging and products.** The current bill sets very ambitious targets for post-consumer recycled content, which will send a very strong market signal for companies to innovate in this direction while simultaneously offering reasonable exemptions and extensions as needed based on changing market conditions.

We would like to offer the following suggestions to refine the policy to align with best practices in EPR policies adopted in the US and Canada. We are available at your convenience for questions and more information. Thank you again for your time and leadership.

- 1. Require the Producer Responsibility Organization (PRO) to be a 501(c)3 nonprofit.** This limits the amount of lobbying activity that can be done by the PRO, provides greater transparency and accountability, and aligns with laws passed in Colorado, California and Oregon.

2. **Change definition of recovery rate to collection rate.** This language is easier to understand for all stakeholders and true to the intention of the definition to measure what is collected for recycling compared to what is actually processed for recycling. Recovery rate is often used to measure what is diverted from landfills and in many cases includes landfill cover or waste incineration, so encourage using collection rate for greater clarity.
3. **Define how the recycling rate is measured.** This provides greater clarity and aligns with other states to standardize reporting for the PRO. Here is the suggested language from the Colorado EPR for packaging and printed paper law:
 - a. Add to p. 198, 15. add new b.: **“the recycling rate is measured at the point where collected covered materials have been prepared for sale or delivery to material reclaimers or end markets after processing at a materials recovery facility or similar establishment that sells directly to reclaimers or end markets.”**
4. **Expand post-consumer recycled content requirements to specify rates by plastic resin type.** APR supports strong post-consumer recycled content requirements for plastics and all packaging materials. However, the broad approach taken in this bill requires further refinement. For example, the category of rigid plastics includes many different resins and formats including PET water bottles, HDPE shampoo bottles, and PP yogurt containers. There are differing technical limitations on how much recycled content can be used in each of these resins and formats, as well as different challenges in collecting enough supply of recycled plastics to meet the ambitious content goals. Current recycled content laws in Washington, Maine, New Jersey, and California provide more specific rates based on plastic resin and format. We suggest striking the current language on how rates will increase and adding language to direct the department to draft rules setting more specific rates and dates for plastic products.
 - a. **p. 205 (C) and (D) add: Within eighteen months, the Department shall establish rates and dates to increase the use of recycled content every three years based on specific plastic resins and packaging formats.**
 - i. **strike p. 205 lines 25-27 and p. 206 lines 3-5**
5. **Reference ISO certification for recycled content requirements.** We strongly support the reference on p. 207, 7. to the ability of the department to require third-party verification of post-consumer recycled content. This certification is needed to ensure program credibility and guarantee a level competitive playing field for producers. It ensures the recycled content comes from consumer-facing recycling programs, which directly supports stronger recycling programs, and deters against the use of factory scraps (known as post-industrial content) that never reach consumers. California and Oregon reference certification standards in existing laws. We suggest adding a reference to ISO certification or other similar programs for more clarity on the type of certification.

- a. p. 207, line 16, add to end: **by an independent, accredited (ISO/IEC 17065) certifying body or other similar body as determined by the department.**
6. **Define recycling service costs to provide greater clarity on how the PRO will reimburse local governments and private service providers.** Service providers incur both direct and indirect costs in recycling programs, and a clear definition of these costs will help determine what are “reasonable costs” as outlined in the bill. Here is the suggested definition from the Colorado EPR for packaging and printed paper law:
 - a. **“recycling services costs’ means the costs of recycling programs to provide recycling services, including applicable costs related to: (a) the administration of recycling programs; (b) capital improvements to recycling programs; (c) the collection, transportation, sorting, and processing of covered materials; (d) public education about recycling programs; and (e) disposal of nonrecyclable collected covered materials.”**
7. **First right of refusal should be based on market prices.** Recycling facilities must be fairly compensated by producers for their materials. The section on p. 219 (m) needs to include a phrase to say producers must offer fair market prices. Here is similar language from the Colorado EPR for packaging and printed paper law for reference:
 - a. *“describe how the organization will provide producers with the opportunity to purchase postconsumer-recycled materials from processors **at market prices** if the producer is interested in obtaining recycled feedstock to achieve minimum postconsumer-recycled-content rates;”*
8. **Financial incentives for compostable packaging must be based on adequate processing facilities.** Compostable packaging is not environmentally preferred to other product types if there is no collection and processing facilities for those materials to ensure they are properly composted. Rather, [some studies show compostable materials](#) actually have a higher carbon footprint and result in greater water pollution than other packaging formats.
 - a. On p. 213 (c) line 8, we suggest amending to read: “whether the packaging or paper product is compostable **and readily accepted for composting and successfully processed by organics facilities within the state**”
9. **Increase small business exemption to \$5 million gross revenue.** This would be consistent with legislation adopted in Colorado and proposed bills in Washington state among others. This is reflective of feedback from state business associations and chambers of commerce that the \$1 million threshold only covers a modest size cafe.
10. **Recommend one PRO to start the program with options for future expansion if needed.** We suggest clarifying the bill to focus on a single PRO to manage the program at the beginning, while maintaining the option for individual producer plans. There are several

benefits to a single PRO, including streamlined reporting for all producers, reduced compliance and regulatory burden on the state agency, eliminating the need for complex coordination between multiple material lists, one direct point of contact for reimbursing municipalities, and a more comprehensive approach to investing in recycling infrastructure. Colorado and California both start with a single PRO, and then allow for additional PROs to apply after five or more years to provide a more competitive environment and to allow for specific materials (i.e. glass, bioplastics, etc.) to form a smaller PRO if desirable.

11. **Focus the program scope on residential programs and small businesses.** The definition of recycling collection on p. 197 (14) moves away from previous legislative efforts focused on residential programs and those businesses served by residential programs. Funding is needed for residential programs and for small businesses, not to subsidize larger businesses with private sector contracts. Many small, local businesses lack recycling services because of the added expense. These businesses tend to produce similar waste streams and recyclables as residents, and in many cases can be effectively integrated into residential recycling collection programs and increase recycling rates. We suggest adding a review of the need to cover small businesses as part of the needs assessment and integrating this into the program plan:

- **p. 215, line 21, new (h): Small business needs: The program plan shall include an assessment of the service availability, gaps, and recycling services costs associated with providing recycling services to nonresidential covered entities, with particular attention to small businesses, and which types and locations of nonresidential covered entities could be provided with recycling services that would increase statewide collection and recycling rates in a cost-effective manner;**
- **p. 197, line 26: after private sector hauler, add “for small businesses as determined by the program plan”**
 - **add again on p. 198, line 2**

We deeply thank you for your time and efforts to improve recycling and reduce waste in New York as a model for the nation. We are facing historic supply chain disruptions, rampant climate change, and pervasive plastic pollution. A best-in-class recycling is a practical, effective solution to address these challenges. We are available at your convenience for any questions or additional information.

Sincerely,



Kate Bailey
Chief Policy Officer, Association of Plastics Recyclers